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LAW EVERYONE SHOULD KNOW, ADULT COURSE OUTLINE.

BY- GAENZLE, LAWRENCE W. AND OTHERS

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THIS LATEST REVISION OF THE INTRODUCTORY COURSE IN LAW FOR LAYMEN (AS PRACTICED IN NEW YORK STATE) DISCUSSES THE NEW DIVORCE LAW, CAPITAL PUNISHMENT, PROTECTION AGAINST SELF-INCRIMINATION, AND TAKING AGAINST A WILL, AS WELL AS OTHER CHANGES IN THE LAW SINCE THE LAST REVISION IN 1961. COURSE 1 INCLUDES SESSIONS ON WILLS DEFINED, WILLS AND ESTATE PLANNING, FAMILY RELATIONS, ACCIDENTS, LOCAL GOVERNMENT, CRIMINAL LAW, COURTS, AND LITIGATION. COURSE 2 COVERS CONTRACTS, REAL ESTATE, NEGOTIABLE INSTRUMENTS, BUSINESS ORGANIZATION, EMPLOYMENT LAWS, COURTS, AND LITIGATION. THE APPENDIX INCLUDES SEVERAL TIPS FOR INSTRUCTORS, A LIST OF 11 FILMS, AND THE ADDRESSES OF THE SOURCES FOR THEM. (EB)

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EVERYONE SHOULD KNOW

ADULT COURSE OUTLINE / BULLETIN NO. 98

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THE UNIVERSITY OF THE STATE OF NEW YORK/THE STATE EDUCATION DEPARTMENT/BUREAU OF CONTINUING EDUCATION CURRICULUM DEVELOPMENT IN COOPERATION WITH NEW YORK STATE BAR ASSOCIATION/ALBANY

THE UNIVERSITY OF THE STATE OF NEW YORK/THE STATE EDUCATION DEPARTMENT
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FOREWORD

The original outline for Law Everyone Should Know was developed some years ago by Hunting Sherrill of the Bureau of Business and Distributive Education. The course attracted immediate attention and a year later the New York State Bar Association appointed an Adult Education Committee headed by Theodore T. Weiser. Under his chairmanship, the committee expanded the original outline. There have been two revisions since then. This latest revision discusses the new divorce law, capital punishment, protection against self-incrimination, and taking against a will as well as other changes in the law since the last revision in 1961.

The revisers for the 1966 edition, members of the New York State Bar Association, are Lawrence W. Gaenzle, Rochester; Harold L. Krainin, New York City; Arthur J. Mahon, New York City; and Thomas M. Whalen III, Albany. Thanks are due to them and to the Bar Association for its cooperation.

The Bureau of Continuing Education Curriculum Development edited the manuscript and prepared it for publication.

Vivienne Anderson
Chief
Bureau of Continuing
Education Curriculum Development

William E. Young
Director
Curriculum Development Center

INTRODUCTION

The basic assumption of an introductory course in any subject is that whoever sits in on it needs to find out about the rudiments. Otherwise he would not be there. The same is true for Law Everyone Should Know. It is an introductory course for laymen. So a layman should not walk out feeling qualified to try his own case or even to give legal advice. The course is merely supposed to give him some idea about the legal side of life, the kind of idea the man with a common cold has about medicine: he knows there are home cures but when the cold gets serious, he calls a doctor. A man who slips and falls because of somebody else's negligence ought to know about his remedy at law. He ought to have his day in court if that is the only solution. But the course is not a substitute for a trained lawyer who has extensive legal knowledge and seasoned judgment.

Although Law Everyone Should Know has been called "a course," it is actually two courses having eight sessions each. The sessions on courts and litigation occur in both. The instructor can either choose one of the two courses or make up his own course from the material available. In many cases the courses are given in successive years. And if the demand is great enough, both courses can be given in one year.

Motion picture films can be borrowed from the sources listed in the Appendix. The films can provide an effective link between group discussion of the law and the law in action.

If local attorneys are not available to teach, qualified lawyers can generally be obtained by writing to: Chairman, Committee on Adult Education, New York State Bar Association, 99 Washington Avenue, Albany 10, New York.

Local directors of adult education may receive assistance in organizing classes in Law Everyone Should Know by directing a request to the Bureau of Business and Distributive Education, State Education Department, Albany, New York, or to the New York State Bar Association.

John E. Whitcraft
Director
Division of General
Occupational Education

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Course One

Course One, Session 1

WILLS DEFINED

I. What Is a Will?

A. A will is a written document formally executed before your death to provide for disposition of your real and personal property after your death.

B. A man who makes a will is called the testator. A woman the testatrix. Anyone leaving a valid will dies testate. Intestate means to die without a will.

C. A person making a will must have testamentary capacity (Dec. Est. L. §10).

1. Knows he is making a will
2. Knows the nature and extent of his property
3. Knows who will receive his property--the distributees
4. Acts freely

D. A will is ambulatory; that is, it may be changed at any time during life. It can be changed to cover property acquired after the will has been executed.

1. A codicil is an amendment attached to a will.

a. May be used for minor changes

b. Must be executed with the same statutory formalities as the will

E. Corrections or changes in a codicil or the will require the same formalities as executing the will itself.

F. Each state has its own laws regarding wills. There is no Federal law on wills.

II. Who Can Make a Will?

A. In New York State any competent person 18 years or older may make a will disposing of real and personal property (Dec. Est. L. §15).

1. Aliens have the right to make wills. A Swedish citizen for instance can execute a valid will here.

2. Although anyone convicted of a felony is civilly dead, he may still make a will.

III. What Can Be Accomplished with a Will?

A. Property can be given to specific persons.

B. Property can be sold to pay death costs without asking a court for authority.

C. Taxes can be anticipated and controlled.

D. Fiduciaries can be appointed.

IV. What Happens Without a Will?

A. Property passes by way of the descent and distribution rules in Decedent Estate Law §83.*

*Intestate Distribution After March 1, 1964
(Dec. Est. L. §83)

If Nearest Relatives Are:	Shares
Spouse and descendant(s)	To spouse: $2,000, plus one-half of balance if only one child and no descendant(s) of a deceased child survive, or if descendant(s) of only one deceased child survive(s); otherwise $2,000 plus one-third of balance. To descendants: remainder
Spouse and parent(s)	To spouse: $25,000, plus one-half of balance To parent(s): remainder
Spouse and brother(s), sister(s), or their descendant(s)	All to spouse
Descendant(s)	All
Parent(s)	All
Brother(s), sister(s), or their descendant(s)	All
Grandparent(s) or their descendant(s)	All
Others	Nothing (all to State)

Note 1: Where the distributees are all in equal degree of relationship to the deceased, they take equally; otherwise, they take per stirpes (by representation). Suppose the distributees are child A, and X and Y as children of deceased Child B. A takes one-half and X and Y one-quarter each. But if child A dies leaving grandchild Z, then X, Y, and Z will each take one-third.

Note 2: No representation is permitted among collaterals after brothers' and sisters' descendants. Thus children of a predeceased first cousin will not share where first cousins survive.

1. Although children of half blood take equally with children of whole blood, stepchildren have no rights of inheritance from stepparents.

2. The inheritance and succession rights of natural and adopted children are the same. But an adopted child loses his right to inherit from and through his natural parents at the time of adoption so that he has no claim if the natural parent dies intestate.

B. The estate is managed by an administrator named by the Surrogate's Court in your home county.

1. The administrator has limited authority.

2. Usually the administrator liquidates your assets, pays your debts, and distributes the proceeds.

3. The priority of appointment of an administrator is established by law.

a. Spouse
b. Child
c. Grandchild
d. Parent
e. Brother or sister
f. Next of kin entitled to share in the estate

V. Where Do You Execute Your Will?

A. Generally law of domicile, the law of your permanent or legal home, controls the disposition of personal property. It is best to have your will prepared and executed according to the law of your home state.

B. Real property and personal property located in another state or foreign country might come under the law of the country or state where they are located. This is called law of situs. If you have assets located outside New York, you may have special problems.

C. If you die outside New York, chances are the other state or foreign country will recognize the will if it is executed according to its laws. In most states change of domicile does not invalidate a properly executed will. Decedent Estate Law §§22-a and 23 cover this area.

Example: Suppose you live in New York at the time of your death. Your will was executed in 1952 while you were living in Kansas. But while you were temporarily in France, it was changed. The will is still acceptable in New York since it was executed according to the laws of France and Kansas.

VI. How Do You Execute a Will in New York (Dec. Est. L. §§22, 27)?

A. You must have two witnesses. (Three are preferable.)

B. The witnesses should not be anybody who will benefit under the will. They should be persons who will survive you and will be easy to locate at your death.

1. If a witness is a beneficiary and his testimony is needed to prove validity, he forfeits any benefit under the will.

2. If he would have been entitled to a share of your estate had there been no will, he receives such share--up to what the will provides (Dec. Est. L. §27).

C. The testator must sign the will (Dec. Est. L. §§21, 22, 28).

1. He may sign his name personally.
2. He may make his mark.
3. He may ask someone to sign his name (a witness).
4. He may have someone guide his hand.
5. He may affix his fingerprint.

D. There are other requirements for executing a will.

1. All witnesses and the testator should remain together while each sees the other sign the will.

2. Immediately before or after signing his will, the testator must announce to the witnesses that the document is his will. This fulfills the legal requirement of publication.
Note: The witnesses do not have to read the will.

3. Each witness must assent to acting as a witness.

4. Each witness must indicate his address. If a witness does not give his address, the will may still be proved, but the witness is subject to a fine.

A. Wills made by persons in actual military service or by a mariner at sea are valid (Surr. Ct. Act §141; Dec. Est. L. §16).

1. Nuncupative--An oral will made in apprehension of death in the hearing of two persons and proved by testimony of these two people is accepted.

2. Holographic--A will entirely in the handwriting of the maker need not be attested to.

B. The soldier, sailor, or mariner must have testamentary capacity. The holographic or nuncupative will of a soldier or sailor is valid only for a year following his separation from service.

VIII. How Do You Revoke Your Will (Dec. Est. L. §34)?

A. Writing a new will cancels the previous one. The will with the latest date is presumed to be the latest will.

B. Intentionally tearing, obliterating, or destroying the will revokes it.

IX. Where Should You Keep Your Will?

A. You have the following choices:

1. In the office safe of your attorney

2. In the possession of your fiduciary

3. In a safe deposit box (The owner-deputy relationship should be explained so that the group understands the advantages and disadvantages of the safe deposit box.)

4. In a Surrogate's Court of any county

B. Retain a copy of your will and review it periodically.

X. How Will Your Estate Be Administered If You Leave a Will?

A. After your death your will must be probated in the Surrogate's Court in your home county. Probate determines the validity of your will. If witnesses are also dead or unavailable, the court may in its discretion accept the will as is. Having witnesses testify, however, is a guarantee that no forged or specious document will be accepted as your will. When the Surrogate's Court accepts the will, it has legal effect.

B. After your will is admitted to probate, your fiduciary must file an oath and a bond if it is required by the will or the court.

C. Your fiduciary administers your estate according to the instructions in the will.

1. He has the duty to follow testamentary directions; your expressed intentions govern his actions. He will not need to apply to the court unless your directions are incomplete or unclear. He will then be forced to seek the court's advice in a construction proceeding. The court will tell him what to do by interpreting your intentions.

2. In general your fiduciary will liquidate your assets, pay your death costs, and distribute your estate to the persons designated.

3. Your fiduciary must account to the beneficiaries and to the court for his actions. He will be held personally responsible for all his actions until he is finally discharged.

Course One, Session 2

WILLS AND ESTATE PLANNING

I. Planning a Will

- A. Spell out objectives.
  - 1. Who are the persons to be benefited?
  - 2. What will work best for complex estate problems? Inter vivos trusts, gifts during life, stock buyout agreements, stock redemption agreements, or other estate planning tools can be used.

II. Nondispository Provisions of a Will

- A. Publication clause
- B. Appointment of fiduciary
- C. Directions to fiduciary
  - 1. Payment of debts and funeral expenses
  - 2. Scope of powers
- D. Appointment of guardians and trustees if appropriate
- E. Designation of successors to all fiduciaries
- F. Testimonium clause and attestation clause

III. Assets Not Includable in a Will

- A. Life insurance proceeds--These are usually payable to beneficiaries named in the policy rather than to the insured's estate. An insurance policy is a contract, and the proceeds will be paid according to its provisions. You cannot change the beneficiaries of the policy. Only the insurer can do that. Usually change of beneficiary can be made only on written notice to the company issuing the policy.
- B. U. S. Savings Bonds held in the name of one person,payable on death to someone else
- C. Joint property with right of survivorship: real property, a bank account, shares of stock

IV. The Right of Election

A. The right of election is given to the surviving spouse (Dec. Est. L. §§18, 18-b). This law is intricate but these are its salient features:

1. Generally a surviving spouse has a right to take against the will of the dead spouse if the will is not at least as generous as the laws of intestacy are. The share is one-half the net estate except if decedent is survived by one or more children or descendents. Then the surviving spouse can take only one-third.

2. Where the elective share is over $2500 and the dead spouse has left the surviving spouse a trust in excess of $2500 but less than $2500 outright, the surviving spouse may take $2500 outright--which is deducted from the amount of the trust. The provisions of the will remain otherwise in effect. Note: The $2500 amount applies to wills executed after August 31, 1930 and prior to September 1, 1966 (Dec. Est. L. §18). The amount is $10,000 for all wills executed after September 1, 1966 (Dec. Est. L. §18-b).

3. Where the elective share is less than $2500 (or $10,000) the surviving spouse may take a share outright, forfeiting all benefits under the will.

4. There is no right to elect if under the will the spouse is left $2500 (or $10,000) outright and the balance of the intestate share is left in trust with income for life.

5. The right of election may be waived by a written instrument freely executed before or after the marriage.

B. The right of election is lost by a spouse who abandons the other spouse, by a valid divorce obtained by either spouse, or by a legal separation obtained by the deceased spouse.

V. Children Under the Will

A. You may disinherit your children--even though you cannot disinherit your wife or husband.

Exception: If a child is born or adopted after your will is executed and no mention has been made about him in the will and no settlement has been made for his benefit, then the child may take his elective share against your will (Dec. Est. L. §26). It is not necessary to make a specific provision for the child if there is proof that failure to do so was done purposely.

VI. Charitable Gifts in a Will

A. If you leave a spouse, child, parent, or descendant surviving, then you may leave only one-half of your net estate to charities.

B. If there is a valid objection to a gift, any excess charitable bequests will be declared invalid and will pass as in intestacy or under other pertinent provisions of the will (Dec. Est. L. §17).

C. A charity must be legally entitled to take the gift. If it is not, the court will exercise the cy-pres doctrine and give the money to a qualified charity resembling the one you originally chose.

VII. Expenses Facing an Estate

A. Medical expenses of the last illness and the funeral

B. Administration expenses--Fiduciaries and administrators are entitled to commissions on both principal and income. These are the basic commissions for a fiduciary in New York State:

4%	on first	$10,000
2 1/2%	on next	$290,000
2%	on balance over	$300,000

Commissions on a $10,000 estate are $400; on a $100,000 estate, $2,650. A single commission is split among all the fiduciaries unless the estate exceeds $100,000. Then each fiduciary gets a full commission. No more than three full commissions are allowed. Generally commissions are not allowed on general or specific legacies or on real estate passing directly to the devisee. Because of the different functions and duties involved, there may be additional commissions to a trustee if a trust is created or to a guardian if there are infants.

C. Liquidation shrinkage--This results when property must be sold to pay death costs. Some property is not worth much to an outsider. For example, a closely held business or unusual assets subject to rapid market fluctuation do not generate much buyer interest at high prices.

D. Death taxes--These may cause severe shrinkage.

1. Federal estate tax

a. The estate must be over $60,000 to be taxable.

b. With the marital deduction an estate of $120,000 can be left without Federal estate tax.

2. New York estate tax

   a. The State tax does not provide the $60,000 exemption allowed under the Federal law, but it does provide other exemptions--primarily proceeds of life insurance policies.

   b. The marital deduction is similar to or the same as that under Federal law.

   c. Death taxes are apportioned among the various beneficiaries of your taxable estate (which may include life insurance proceeds and jointly held property), according to the benefits they receive, unless you make some other provision in the will.

VIII. Types of Disposition Under a Will

A. Devise is a gift of real estate.

B. Bequests or legacies can be effected in the following ways:

1. By giving personal property such as jewelery or certain shares of stock

2. By making a general bequest which is payable out of the general assets of your estate

3. By making a demonstrative bequest (This is paid from a particular fund or property in the estate.)

4. By giving a conditional legacy--one having reasonable conditions qualifying the right to take. The conditions cannot be against public policy. You can prepare for a condition not being fulfilled by providing for a gift. Note: If the legatee dies before the testator, the legacy is called a lapsed legacy. In New York such a legacy to a brother, sister, or descendant passes to that legatee's descendants.

C. Class gifts can be given to children and other descendants.

1. Per stirpes means that the issue of deceased children or descendants take the share their parent would have taken.

   Example--Property has been left to A and B but B is dead and leaves two children, C and D. If the property passes per stirpes, A will take one-half and C and D will each take one-quarter.

2. Per capita means to each an equal share. In the above example, A, C, and D would each take one-third.

3. In New York, unless otherwise provided in the will, a gift will be presumed to be per capita among a class of equal degree of consanguinity. If in unequal degree of consanguinity, then it will be per stirpes(Dec. Est. L. §47-a).

D. Trusts can provide an income.

1. If you wish someone to get the income from a fund or property during life--or for a shorter period--and another person to get the principal later, a trust can be created.

    a. A trust set up by a will is a testamentary trust.

    b. A trust under which title passes between living persons is a living or inter vivos trust.

    c. A trust requires a trustee. The trustee is a fiduciary who manages property left with him, collects the income therefrom, and pays over the income and the principal of the trust in accordance with the terms of the will or trust agreement.

2. There are limitations by law on trusts in New York State.

    a. A trust cannot last longer than the duration of the lives of persons who are in being at the creation of the trust, plus 21 years.

    b. Generally the beneficiary of a trust cannot alienate his right to receive income from the trust property. Nor can creditors of the beneficiary reach the income. Under a recently enacted law, however, a beneficiary will be permitted to assign his right to income of a trust:

        (1) To the extent of the excess over $10,000 annually, to specified relatives (as remote as nephews and nieces) or

        (2) In any amount to or for the benefit of person(s) he is legally obligated to support

IX. Summary

A. A will is always revocable. It can be revoked by a new will or by destroying the present will with intent to revoke. When a new will is executed, all older wills should be destroyed.

1. If at the time of death several wills are found, the one of most recent date controls.

2. If the last will is denied probate, it is then possible to offer the next preceding will for probate.

B. Wills may be contested. A person entitled to take a portion of an estate in intestacy may contest the will. Here are grounds for contesting a will:

1. Ignoring proper form and method of execution

2. Exceeding legal limit in gifts to charities

3. Attempting to disinherit a spouse

4. Not providing for a child born or adopted after execution of the will

5. Violating rule against perpetuities in a trust

6. Being under 18 years of age

7. Exercising undue influence, fraud, coercion

8. Having a mental incapacity (This would vitiate the whole will while some of the other grounds listed might invalidate only part of the will.)

C. A will may be amended or altered in part by a codicil which must be executed with the same care and formalities as the original will. A will cannot be amended by deletions, changes, or interlineations made in the will itself by the testator alone. Witnesses are still needed. The whole will may be invalidated.

D. There are testamentary formalities. When a testamentary disposition is attempted without fulfilling these requirements, it will fail; for example, a label on a piece of jewelry or on a stock certificate reading, "Upon my death this is to go to Aunt Sophie," is invalid. Though the testator intended that Aunt Sophie should have the gift, he has not complied with formalities of the law. His gift must be expressed in a formal will properly executed.

E. After a will is made it should be reviewed periodically.

1. Changes in the law relating to wills, trusts, and taxes

2. Changed conditions as to property, family, and desires:

    a. When you marry or have a child

    b. When you are divorced or separated (Provisions for a spouse are not revoked by a divorce.)

    c. When anyone named in the will dies

d. When principal beneficiaries under the will marry and have children

e. When you move to another state

f. When any important change occurs to your property, your family, or yourself

Course One, Session 3

FAMILY RELATIONS

I. The Marriage Relationship

   A. Marriage is a civil contract which can be terminated only by the courts.

      1. New York must give full faith and credit to marriages, separations, and divorces of other states, but New York Courts may question whether the other state had jurisdiction over the parties.

      2. Although New York recognizes any marriage which is valid where it was contracted, there are exceptions when marriage is between certain parties.

         a. Ancestor and descendant

         b. Brother and sister, uncle and niece, or aunt and nephew of whole or half blood

         c. Anybody already married

      3. If the man and woman come within the exceptions above, the marriage is void, that is, it does not exist.

   B. The parties must be capable of entering into a valid marriage.

      1. If either marriage partner is incurably incapable of sexual intercourse, the marriage is voidable. It may be annulled.

      2. Both parties must be over the age of 18 years. A marriage between people under 18 is voidable at the discretion of the court if they want an annulment.

      3. If after marriage either partner becomes incurably insane for five years or more, the marriage is voidable.

   C. The parties must consent to the marriage.

      1. Marriage is voidable if either party cannot understand the nature, effect, and consequence of marriage.

      2. Marriage is voidable if one party enters into it as a result of force or duress practiced by the other party or with the other party's knowledge.

3. Marriage is voidable if consent was obtained by fraud, provided the fraud was such that it would have deceived an ordinarily prudent person and was material to obtaining the other party's consent. The fraud must be such as to go to the essence of the marriage contract.

D. Certain formalities are required for a valid marriage.

1. Marriage license

2. Blood test

3. Written consent of parents if male is under 21 or female under 18

4. Solemnization by a clergyman, certain municipal officials, judge of a court of record, or certain other judges (Only one witness is needed. Or there can be a written contract acknowledged by the parties and two witnesses before a judge or a court of record.)

E. There is an exception--the common law marriage.

1. A common law marriage entered into in a state sanctioning such marriages is valid.

2. A common law marriage entered into in New York State before April 29, 1933 (except between January 1, 1902 and January 1, 1908) is valid. These are the essential elements:

a. There needs to be agreement between the parties--a present consent to take each other as husband and wife (even though not followed by cohabitation).

b. Proof of cohabitation of partners and their holding themselves out to be husband and wife raises a presumption they agreed to marry.

3. A common law marriage, if valid when it was made, is still valid.

II. Rights and Obligations of Husband and Wife

A. Support and maintenance

1. Husband has a legal obligation to support his wife and cannot be relieved of that duty by contract.

2. Wife may sue and recover from husband money she has had to pay for her own or the children's support. She is only entitled to recover the money if she objected before making the expenditures. She may recover only for necessaries. What constitutes "necessaries" turns on the mode of living of the partners.

3. The husband is not obliged to support a wife who abandons him or commits adultery.

4. A husband or wife may be compelled by the State to contribute to the support of the other who has become a public charge.

5. If husband and wife are living together (apart also, if husband is not supporting the wife), third parties may recover from the husband for necessaries purchased by the wife for herself or the household.

6. The husband's liability for necessaries is based on the theory that his wife is his agent. The husband is not liable, therefore, if purchases are made by the wife upon her own credit when the things purchased are beyond the husband's station in life or he has previously directed the seller not to extend credit on his account to his wife.

B. Rights to have each other's society

1. Each has the right to cohabit and have intercourse with the other. These rights may be forfeited by adultery or other misconduct.

2. There is no longer a cause of action maintainable by either spouse for alienation of affections or criminal conversation.

3. The husband has a cause of action for the loss of services and society of the wife resulting from personal injury to the wife through the wrong of another. The wife does not have a corresponding cause of action.

C. Property rights

1. Wife has the same rights and liabilities as the husband.

2. Wife is always liable for her own contracts, including those for necessaries.

3. Wife is entitled to keep her own earnings.

4. Husband is entitled to wife's services in the household.

5. Wife has no dower rights unless they accrued prior to September 1, 1930.

6. If either spouse dies without a valid will, the survivor is entitled to a share of the decedent's estate, its size depending on who else survives.

7. A right of election exists as to a surviving spouse when the other spouse dies after September 1, 1930, with a will which does not leave a certain amount to the survivor.

8. The right of election is lost by a spouse who abandons the other spouse, by a valid divorce obtained by either spouse, or by a legal separation obtained by the deceased spouse.

9. Either spouse may sue the other for injuries to his person or damages to his property.

D. Miscellaneous rights

1. The husband's domicile is by law the wife's also.

2. The wife may acquire a separate domicile if she lives separate from him because of his midconduct, consent, or their judicial separation.

3. The husband has the right to select the family home.

4. The husband is not liable for his wife's wrongful acts unless committed with his actual coercion or instigation.

5. Either spouse is a competent witness against the other; but if either objects, he or she cannot be compelled to disclose a confidential communication between them made during the marriage.

III. Rights and Obligations of Parents and Children

A. Parents

1. The father has to support his children until they are 21 or emancipated. If the child is physically or mentally unable to support himself,the liability may continue after 21.

2. The father is not liable for necessaries bought by his infant child. But if he doesn't support the child, he is liable for the reasonable value of necessities supplied to a person who is caring for the infant.

3. If the father is dead, unable to support his child, or cannot be found in the State, the mother must support the child.

4. Neither the father nor the mother is required by law to leave any of his or her estate to the children. Each or both may cut the children off by their wills.*

5. The parents are joint guardians of their children and have natural and equal rights to their custody.

6. In the interests of a child's welfare, a court may deprive one or both of the parents of custody of the child.

7. In actions for divorce, separation, or annulment the court may determine rights of custody and obligations to support the children.

B. Children

1. A parent has the right of the services of a minor, unemancipated child.

2. What an employer pays to a child cannot be claimed by the parent unless the parent gives written notice of a claim to the child's earnings within 30 days after employment starts.

3. The father--or the mother if she headed the household and paid the bills--has a cause of action for the loss of the infant child's services and necessary expenses against one who is liable for personal injuries sustained by the child.

4. A child may be liable for the support of a parent if the parent is or may be a public charge.

5. Except for earnings, the child's property may not be used for the child's support, but the court may allow a parent to use the child's estate for support of the child if the parent does not have enough money.

6. A child may be emancipated if both parents and child consent and child is 18 or over. If the child is emancipated, the parents lose their right to services, earnings, and control.

7. Minor, unemancipated children are subject to the control of the parents.

8. The parent is not liable for the child's wrongs solely by reason of the parent-child relationship.

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*Note the exception on page 8, "Children Under the Will."

C. Laws regulating adoption

1. An adopted child and the foster parents have all the rights and obligations to one another as of a natural child and parents.

2. The natural parents lose all their rights and liabilities to the adopted child, and the adopted child, at the time of adoption, loses his right to inherit from his natural parents.

3. An unmarried adult alone or a husband and wife together can adopt another person, whether adult or minor. Also, a spouse may adopt his spouse's child.

4. Consent to an adoption is required in some cases.

    a. The foster child (if over 14 years of age) unless the judge or Surrogate in his discretion dispenses with consent

    b. The parents or surviving parent, whether adult or infant, of a child born in wedlock

    c. The mother, whether adult or infant, of a child born out of wedlock

    d. Any person or authorized agency having lawful custody of the foster child

5. Under certain circumstances--for example, child abandoned, parents divorced for adultery, or insanity--consent of the parent or parents of a minor child may not be required.

6. An order of adoption may be set aside for fraud, newly-discovered evidence, or other good cause.

D. Laws regarding illegitimate children

1. A child born or begotten out of wedlock is illegitimate.

2. If the parents of a child begotten or born before marriage thereafter marry, the child is legitimatized.

3. A child born of a married woman is presumed legitimate. ("Seven Seas Doctrine")

4. The court may order the father to support his illegitimate child and to pay certain other expenses, such as the mother's expenses during her pregnancy.

5. A child of an annulled marriage does not lose his legitimacy in most cases.

IV. Terminating the Marriage Relationship

A. Divorce

1. Obtained in New York State

    a. Until the new divorce law goes into effect on September 1, 1967,* the only ground for divorce presently recognized in New York is adultery.

    b. To prove adultery, more evidence than the testimony of one prostitute or detective is usually required.

    c. The adultery cannot be proved by the testimony of the husband or wife.

    d. The husband and wife are competent to testify on matters other than proving adultery, such as to prove the marriage, to disprove the adultery, or to disprove defenses to the action.

    e. Even though the adultery is proved, the divorce will be denied if it is shown that the one seeking the divorce did any of the following:

        (1) Connived to have the adultery committed or procured it

        (2) Actually forgave the act of adultery or voluntarily cohabited with the other after knowledge of the act--condonation

        (3) Failed to commence divorce action within five years after discovery that the act was committed--Statute of Limitations

        (4) Also committed adultery under such circumstances that the other party would have been entitled, if innocent, to a divorce--recrimination

        (5) Consented to the commission of the adultery

    f. The legitimacy of the children may be tried as part of the divorce action.

    g. Either spouse may obtain a jury trial on the issue of adultery.

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*A brief rundown on the new law appears at the end of this Session (p. 23).

        h. Even if the defendant defaults, the plaintiff must prove that there has been adultery, that none of the defenses exist, and that there has been no prior divorce.

        i. The judgment of divorce does not become final until three months after being entered.

    2. Divorces obtained in other states

        a. There is no uniform United States divorce law. The laws of divorce vary widely from state to state and are complex.

        b. Whether a divorce obtained outside of New York will be recognized by the New York courts depends on certain factors.

            (1) Whether the spouse who obtained the divorce was domiciled in the other jurisdiction

            (2) Whether the defendant appeared or otherwise conferred jurisdiction on the court

            (3) Whether the defendant was domiciled in the other jurisdiction

            (4) Whether the partner who claimed the invalidity of the out-of-State divorce is the one who obtained it

    3. Divorce obtained in foreign countries

        a. A mail order divorce is invalid.

        b. A bilateral divorce is subject to the basic rules enunciated in "b" above but is a matter of comity, not full faith and credit. (Wood vs. Wood and Rosenstiel vs. Rosenstiel)

B. Dissolution of marriage--"Enoch Arden divorce"

    1. Petitioning spouse

        a. Show that the other spouse has been absent for five successive years

        b. Assert belief that the absent spouse is dead

        c. Set forth particulars as to efforts made to discover evidence that the absent spouse is still living

    2. After the dissolution becomes final and assuming the court had jurisdiction, the reappearance of the absent spouse does not invalidate the dissolution.

C. Annulment of marriage

  1. An action for an annulment may be brought if the marriage is either void or voidable.

  2. Either party has a right to a jury trial as to questions of fact, except where the action is based on physical incapacity.

  3. The facts must be proved even if the defendant has defaulted.

  4. The testimony of either party alone is not sufficient proof. There must be corroboration.

  5. The decree becomes final three months after it is entered.

  6. The court may determine the legitimacy of children in the annulment decree.

V. Separations

A. A separation decree may be obtained by either partner in a court action on the following grounds:

  1. Cruel and inhuman treatment

  2. Conduct on the part of the defendant making it unsafe and improper for the plaintiff to live with the defendant

  3. Abandonment

  4. Adultery

  5. Nonsupport--Only the wife can use this cause of action.

B. The misconduct of the plaintiff is a good defense.

C. The parties may separate by agreement without court action.

D. Whether the separation is by court decree or agreement, the partners are still married. The separation only modifies the marriage rights and obligations, by providing for example that cohabitation is unnecessary or that neither has a right to the other's society.

VI. Alimony

A. The court can grant alimony for wife and child support in actions for divorce, annulment, or separation. A court can also require the husband to pay for legal expenses whether the wife is plaintiff or defendant.

B. The court retains jurisdiction after the decree and may modify the provisions of the decree as to alimony.

C. The amount of alimony depends upon the circumstances of the marriage partners.

D. If the husband is in contempt of court for ignoring the court decree or for otherwise defaulting in his obligation to pay alimony, the court decree must be enforced through contempt proceedings, sequestration, or execution of judgment.

The New Divorce Law

The new law liberalizes grounds for divorce, fixes a mandatory conciliation period following commencement of action, and fixes new provisions relating to limitation on actions for divorce and separation. Effective September 1, 1967, an action may be maintained by a husband or wife for a judgment divorcing the parties and dissolving the marriage on any of the following grounds:

1. The cruel and inhuman treatment of the plaintiff by the defendant such that the conduct of the defendant so endangers the physical or mental well being of the plaintiff as renders it unsafe or improper for the plaintiff to cohabit with the defendant

2. The abandonment of the plaintiff by the defendant for a period of two or more years

3. The confinement of the defendant to prison for a period of three or more consecutive years after the marriage of plaintiff and defendant

4. The commission of an act of adultery, provided that adultery is defined as the commission of an act of sexual or deviate sexual intercourse, voluntarily performed by the defendant, with a person other than the plaintiff after the marriage of plaintiff and defendant

5. The husband and wife have lived apart pursuant to a decree of separation for a period of two years after the granting of such decree, and satisfactory proof has been submitted by the plaintiff that he or she has duly performed all the terms and conditions of such decree

6. The husband and wife have lived separate and apart pursuant to a written agreement of separation, subscribed and acknowledged by the parties thereto in the form required to entitle a deed to be recorded, for a period of two years after the execution of such agreement and satisfactory proof has been submitted by the plaintiff that he or she has duly performed all the terms and conditions of such agreement (Such agreement shall be filed in the office of the clerk of the county wherein either party resides within thirty days after execution thereof.)

Course One, Session 4

ACCIDENTS

I. Negligence and Liability: General Rules

A. Legally, compensable accidents are occurrences causing personal injury or property damage because of negligence.

B. Accident insurance companies protect the individual policyholder from sudden, large losses by distributing financial losses among a great many policyholders who pay insurance premiums to cover these losses.

C. No matter how great the injury or damage, there can be no recovery in court unless certain proof is established.

1. Defendant's negligence

a. He did something wrong or failed to do something the law required him to do for the protection of the public or the individual (either active or passive negligence).

Caveat: Specific laws sometimes create their own rules. See Labor Law §240, Vehicle and Traffic Law §59, and Personal Property Law §96.

b. Damage or injury must flow from acts of defendant.

c. There must be causal relationship--proximate cause. There are presumptions created by different grades of law--statutes, ordinances, rules, and regulations.

d. An unexplained skid does not presume negligence. There must be some other factor to show neglect.

2. Plaintiff's contributory negligence

a. Contributory negligence means that plaintiff is wholly or partially at fault. Plaintiff is required to use reasonable care and prudence for his own protection.

b. Contributory negligence of plaintiff bars recovery, except in certain nuisance cases. There is no comparative negligence under New York law.

3. Plaintiff's claim

a. Burden of proof is on plaintiff.

b. There must be fair preponderance of evidence:

(1) Circumstantial evidence
(2) Credible evidence

c. Most accident cases involve questions of fact and the facts are usually in dispute.

d. Not quantity, but quality of witnesses is desirable.

(1) Interested and disinterested witnesses
(2) Eyewitnesses

II. Automobile Negligence: Owner, Driver, and Passenger

A. Negligence of owner

1. Like any other driver the owner is responsible for his own negligent driving while behind the wheel.

2. He is also liable if his car is not mechanically sound.

3. But even if he is not driving the car, he can be held liable for an accident if he gave his permission or consent to use the car--either expressly or impliedly (Veh.& Traf. L. §50). Suppose an owner leaves his car with a mechanic for repairs and the mechanic's assistant has an accident with the car. The owner can be sued (and so can the mechanic's assistant).

B. Negligence of driver

1. The driver is liable for his own acts under the general rules of negligence.

2. He must operate his car with reasonable prudence. Driver negligence may be established in the following cases:

a. Rear-end collisions
b. Runaway cars (improper parking)
c. Loss of control due to sickness, fright, or distractions
d. Restrictions on driving--glasses, physical handicap
e. Speeding

3. The doctrine of last clear chance makes the driver liable for not averting an accident he was forewarned about.

C. Negligence of passenger

1. Since a passenger is not in control of the vehicle, there is ordinarily no question of negligence or contributory negligence. A passenger in a two-car collision may sue both drivers and need not choose at his own risk. Note: A husband and wife may sue each other, but they are not covered under their insurance policy because of the restriction of Insurance Law §167(3).

2. A passenger assumes a risk in these instances:

    a. Knows of a defect in the car--brakes, lights, tires
    b. Knows of the driver's intoxication or illness
    c. Condones the driver's excessive speed

3. A carrier for hire has a duty to furnish safe carriage. Thus a passenger has a prima facie claim against the carrier who has the burden of going forward.

D. Negligence of pedestrian

1. Crossing against lights
2. Jaywalking
3. Coming out from behind parked cars

III. The Scene of an Accident: What To Do?

A. Attend any seriously injured person who may be in imminent danger and make the person comfortable, but do not move a seriously injured person. The good samaritan law relieves doctors or nurses from liability while moving an injured person. But all other people may be held liable.

B. Call police. If anyone is hurt ask for ambulance and professional aid. Autos involved should not be moved until police come. If the accident is serious, take photos of cars before moving them.

C. Immediately get the following information:

1. Name and address of driver and owner of other car(s), license number, make of car, and name of the insurance company

2. The number identifying each policeman at the scene of accident, as shown on police badge on his cap or jacket

3. Time and place that accident occurred plus weather and and road conditions

4. Names and addresses of any witnesses or the license numbers of cars nearby

IV. Motor Vehicle Accident Indemnification Corporation

A. The M.V.A.I.C. was designed to protect victims of accidents caused by the following:

1. Out-of-state uninsured motor vehicles
2. Hit and run motor vehicles
3. Uninsured motor vehicles registered in New York
4. Stolen motor vehicles

5. Motor vehicles operated without permission of the owner
6. Insured motor vehicles where the insurer disclaims liability or denies coverage
7. Unregistered motor vehicles

B. The M.V.A.I.C. Law has certain time limitations which must be met if a party is to be recompensed for his injury. (See Ins. L. §600 et. seq.)

V. Reporting an Accident

A. The driver is required to notify the Motor Vehicle Bureau within 10 days when there is personal injury or when property damage is over $150.

1. The report form may be obtained from the Commissioner of Motor Vehicles. The report becomes a public record and can be obtained by anyone for a small fee.

2. Hearings may be ordered by the Commissioner to determine responsibility if facts warrant suspension or revocation of driver's license.

B. The insurance company should be notified as soon as possible.

1. Companies require immediate written notice containing information listed in C above and a brief, concise description of how the accident happened.

2. Auto insurance coverage includes:

a. Bodily injury liability--The company's maximum liability for injury to one person as the result of any one occurrence is limited to the amount stated in the policy. The limit of the company's liability for two or more injured persons as the result of any one occurrence is also stated in the policy.

b. Property damage liability--The limit of the company's liability for damage to or destruction of property of one or more persons as the result of any one occurrence is stated in the policy.

c. Collision--This covers damage to the insured's automobile from contact with another vehicle or object such as a building or livestock.

d. Comprehensive--This covers damage to the insured's automobile from causes other than collision. Falling objects, fire, theft, and broken glass are examples.

VI. Accidents on a Public Street

A. The owner of a street must maintain it in a reasonably safe condition. A municipality is subject to the same general rules of negligence as a private owner.

  1. Duty of municipality to keep streets and roads repaired

    a. Ordinance assessing owner of abutting property for cost of repair does not create liability.

    b. Owners of property adjoining the street are liable only for affirmative act in destroying, defacing, or obstructing the walk or roadway.

  2. Special user may create liability for property owner: drains, curb cuts, driveways, cellar vaults, cellar doors, stoops, encroachments, overhangs.

B. The same general rules apply to snow and ice cases.

  1. Time element is vitally important.
  2. Responsibility, if any, is upon municipality.
  3. Duty cannot be shifted to abutting owner by municipality.
  4. "Cleaning" statutes do not create liability for property owner unless he creates the hazard.

C. Notice of any defective condition must have been made known to municipality. And the municipality must have had an opportunity to repair the defective condition. Otherwise the municipality cannot be held liable.

  1. Actual notice

    a. Prior statement to municipality

    b. Inspection reports, police, fire, department of public works

    c. Official communications of notices to repair or notices of violation on record

    d. Prior accident reports or claims

  2. Constructive notice

    a. Passage of sufficient time to charge reasonably prudent person with knowledge

    b. Use of walk or roadway by municipal employees--police on beat, sanitation employees, etc.

    c. Prior accidents or claims

D. Notice of claim against a municipality must be made within a specific time.

1. General Municipal Law §50

a. The written claim should include the following:

(1) Location
(2) Negligence claimed
(3) Description of accident
(4) Injuries
(5) Damages

b. A written claim is subject to regulations.

(1) Filed within 90 days
(2) Verified

2. Exculpatory statutes

a. Ordinances require prior written notice as prerequisite to claim if defect is on walk, road, bridge, etc.--unless act is committed by municipality itself.

b. Validity of such an ordinance is still questionable, although its use is becoming prevalent in New York State.

3. Contributory negligence

a. Right to assume free and unobstructed way

b. Duty to observe condition

c. Latent defects

d. Traps and snares

e. No "four-inch" rule; negligence is not a matter of inches, but a breach of a duty which wrongdoer owes to plaintiff.

f. Momentary distraction (Inattention is not contributory negligence.)

VII. Accidents in Buildings

A. Owner is not insurer of patron's safety.

B. The owner has a duty of reasonable care only and there is a distinguishable duty owed to certain other people.

1. Invitee or guest
2. Licensee
3. Trespasser

C. Reasonable care is based on foresight, not hindsight.

  1. The standard of care is determined by the times and the area.

  2. The mere fact that an accident occurs on insured's premises does not create a cause of action.

D. The owner of a premises is not required to do certain things.

  1. Entranceways

    a. No duty to use rubber mats

    b. No duty to use anti-slipping compounds

    c. Reasonable time after cessation of storm allowed to remove snow, ice, or water

    d. Terazzo floors not negligence per se even though they are slippery when wet

  2. Floors

    a. Wax--must show excessive amount or improper application

    b. Dirt--must show accumulation and lapse of sufficient time to charge defendant with notice

    c. Obstructions--must show whether obvious

    d. Floor coverings--must show whether torn, worn, or raised

  3. Stairways

    1. Construction defects--building codes, building customs handrails, risers

    2. Coverings--nosings, stair pads

  4. Lights

    1. Specific statutes--multiple dwelling laws, etc.
    2. Maintenance--common law vs. statute

VIII. Products Liability

A. Express warranties

B. Implied warranties

1. Merchantability (U.C.C. 2-314) means that the product has a warranty.

   a. Fits the ordinary purposes for which such goods are used

   b. Conforms to any promises or affirmations of fact made on the container or label

2. Liability is imposed upon the seller who is a merchant. Isolated sale of a particular product does not make party a a "merchant."

3. Agriculture and Markets Acts

   a. Do not prohibit adulteration of food, such as diluting milk with water

   b. Do not create a statutory cause of action

C. Negligence

1. Improper manufacture

   a. Use of deleterious substances
   b. Negligent methods

      (1) No safeguards
      (2) No inspection
      (3) Unsanitary conditions
      (4) Use of defective machinery
      (5) Improper storage of supplies
      (6) Use of irritating substances
      (7) Use of flammable materials

2. Improper handling

   a. Exposure to risk, contamination
   b. Improper storage
   c. Improper refrigeration or transportation

3. Inherently dangerous object or object which becomes inherently dangerous if improperly prepared--doctrine of Mac Pherson vs. Buick

D. Injuries

Causal relation--must prove cause and effect, that the specific contaminated food caused the illness or the defective merchandise caused the damage or injury

Course One, Session 5

LOCAL GOVERNMENT

I. State and Local Government

   A. State organization

      1. 62 counties
      2. 931 towns
      3. 62 cities
      4. 554 incorporated villages
      5. 950 school districts(as of July 1, 1966)

   B. County organization

      1. The 62 counties were created by a series of acts of the State Legislature between 1786 and 1914.

      2. A county is governed by an elected board of supervisors, sometimes called a county council. There is one supervisor from each town and one or more from each city.

      3. The board of supervisors has both legislative and executive powers.

   C. City government

      1. A city is a corporation created by an act of the Legislature upon request of the voters.

      2. About 75 percent of the cities operate under individual charters enacted by the Legislature. The remainder are governed under the general municipal laws of the State.

      3. The four largest cities (New York, Buffalo, Rochester, Syracuse) have been given particularly broad powers of home rule by special acts of the Legislature.

      4. There are several forms of city government.

         a. Mayor-Council plan: The mayor is chief executive officer and the council is the legislative body.

         b. Council-Manager plan: The city manager is chief administrative officer and council is the chief legislative body.

         c. Commission form of government: The commissioners are administrative department heads as well as legislators.

II. New York City

- A. Because of its size in area and population, New York City has become a completely integrated organization with a more departmentalized government than other cities.
    - 1. The Board of Estimate consists of the Mayor, the comptroller, and the president of the Common Council, together with one representative from each of the five counties in the city. They are the five borough presidents.
    - 2. The Common Council consists of 35 councilmen elected from the 25 State senatorial districts in the city and two elected at large, not of the same party, from each of the five boroughs. The council has these duties:
        - a. Initiate local laws
        - b. Fix taxes
        - c. Appoint members of the Board of Elections
        - d. Pass on the budget
    - 3. The Mayor presides over the Board of Estimate and has veto power over the actions of the Common Council.

III. Town Government

- A. Classes of towns
    - 1. First class towns are in general those with a population of 10,000 or more. Some towns with a population of 5,000 or more may elect to become first class.
    - 2. All other towns are second class.
- B. Town officers
    - 1. The supervisor is the chief executive officer and also representative of the town on the county board of supervisors. He is a voting member of the town board and the chairman.

IV. Village Government

- A. The population of villages ranges from Valley Stream's 38,500 to Dering Harbor's four (1965 figures).
- B. Village officers
    - 1. Mayor
    - 2. Board of trustees
    - 3. Clerk
    - 4. Treasurer
    - 5. Assessors
    - 6. Police justices

C. The duties of the village board are similar to those of other governing bodies.

1. Preparing annual budget
2. Fixing the tax rate and supervising the collection of taxes
3. Maintaining the health, safety, and welfare of village inhabitants

V. Special Districts

These are created when part of a township requires a service such as fire protection, drainage, parks, a water supply or sewers. Such districts are administered by special commissions or boards and are supported by special taxes levied upon the property of the owners in each district.

VI. State and Local Relations

A. The municipalities in the State have home rule powers restricted, however, by the general law and any special acts of the Legislature. Financial activities are specifically limited by the State Constitution. The State provides a large amount of the funds required to finance local operations and supervises these functions.

B. About sixty percent of the State's total expenditures is for local assistance. Most of this is for education and the rest is for welfare, health, and highways. The State designates the purpose of the money and requires that regulations be followed. County highway programs and public health nursing programs, for example, must meet State standards before State aid can be claimed.

C. The State offers local governments expert advice, research facilities, and assistance in solving local problems.

D. The administration of State law is frequently in the hands of local officials. Counties assume responsibility for administering relief although funds may come from the State or even the Federal Government. Cities and counties enforce the Weights and Measures Laws.

E. Law enforcement officers such as the district attorney and the sheriff of a county are elected by the residents of their county but are considered officers of the State and may be appointed or removed by the Governor.

F. Civil Service administration is carried on both locally and on a State level.

G. The regulation and conduct of elections is a State function controlled by the State Election Law. Administration, however, is in the hands of the local Board of Elections appointed in each county except in New York City.

To the Instructor

A more detailed course of instruction on local government may be developed with these two books:

1. Our State and Local Government, published by the New York State Education Department

2. Know Your State, published by the League of Women Voters of New York

The books are detailed enough to give the group a good idea about how local government works.

Course One, Session 6

CRIMINAL LAW

I. Crime and Arrest

   A. What is a crime?

      1. Two types of crimes in New York State are felonies and misdemeanors.

         a. Felony

            (1) A felony is a crime carrying the death penalty or a crime carrying a punishment of imprisonment in a State penitentiary.

            (2) A felony conviction affects voting rights, the ability to hold public office, and the right to enjoy the benefits of private trusts.

         b. Misdemeanor--punishable by imprisonment in county jail for less than one year.

      2. A third type of crime is the offense. This includes violations that are potentially dangerous.

         a. Since the law does not define offenses as crimes, there is no right to a jury trial.

         b. Any person convicted of an offense does not acquire a criminal record.

         c. Overtime parking, speeding, public intoxication, and vagrancy are examples of offenses.

   B. How is an arrest made?

      1. A court of competent jurisdiction can issue a warrant.

      2. But a private citizen can make an arrest without a warrant.

         a. When a crime is committed or attempted in his presence

         b. When a felony has been committed, although not in his presence

      3. A peace officer can in addition make an arrest without a warrant when he has reasonable cause to believe a felony has been committed and the officer has reasonable cause to believe the suspect committed it.

II. Bringing an Action

A. Swear out an information.

1. An information is a document stating that a particular person has committed a crime.

2. When the information is sworn to, the judge will issue a warrant of arrest.

B. The DA is a public officer who is responsible for prosecuting those accused of crimes. Have the DA bring the matter to the Grand Jury.

1. The Grand Jury hears only the complainant's side of the case.

   a. Decides whether there is sufficient evidence of crime to indict; that is, to make suspected offenders stand trial

   b. Consists of not less than 16 nor more than 23 members

   c. Requires 16 persons for the transaction of business

   d. Requires agreement among 12 jurors for indictment

2. The DA advises the Grand Jury.

3. The Grand Jury considers the evidence and the circumstances. They return an indictment if they feel a crime has been committed and that it is reasonable to assume that the accused committed it.

4. The accused may appear before the Grand Jury, but he must sign a waiver of immunity. This means that anything he says can be used against him if an indictment is returned.

III. Entitlement to Counsel and Bail

A. In June 1966, the United States Supreme Court held that the prosecution in a criminal case could not use any exculpatory or inculpatory statements made by a defendant while being held for questioning unless there is proof that procedural safeguards against self-incrimination were used:

1. Warning that defendant has a right to remain silent (If defendant is alone and does not want to be questioned, police may not question him.)

2. Warning that any statement may be used against him

3. Warning that he can have an attorney present (If defendant before or during questioning indicates he wants an attorney, there can be no further questioning.)

B. The defendant is entitled to an adjournment to obtain counsel.

C. If he has been indicted or arrested, the defendant is ordinarily entitled to bail. These are the exceptions: first degree murder, kidnapping, and certain other crimes (prior felony). Bail is then discretionary with the court.

   1. Bail is the amount of money or property posed to ensure the court of defendant's presence at trial.

   2. Property bail is usually set at twice the amount of cash bail.

IV. Defining Criminal Acts

A. Murder

   1. First degree

      a. This is punishable by death if the victim is a police officer killed in the line of duty. The death penalty can also be imposed where a lifer kills a fellow prisoner. In all other cases, there is no death sentence.

   2. Second degree murder is to kill without premeditation.

   3. Felony murder is a type of first degree murder which occurs while a felony is being committed or attempted.

      a. Shooting a third person while a felonious assault is being committed on another person

      b. Intentionally burning a building while a person is inside

      c. Wrecking a train

B. Manslaughter--killing somebody accidentally

   1. First degree

      a. In commission of or attempt to commit a misdemeanor

      b. In heat of passion with dangerous weapon

      c. By willful encouragement or aid in another's suicide

   2. Second degree

      a. Killing someone while trespassing

    b. Killing someone in the heat of passion but without a dangerous weapon

C. Culpable or criminal negligence

  1. Killing a person while driving a car

  2. Killing a person by reckless or negligent use of a firearm or longbow

D. Assault

  1. First degree--intent to kill or to commit a felony on person or property,using deadly weapon or destructive object

  2. Second degree--intent to injure with or without a weapon or instrument

  3. Third degree--to strike with fist or culpably negligent operation of an auto

E. Justified killing

  1. In defense of a wife, close relative, servant or other person in presence of slayer

  2. In self-defense where absolutely necessary

  3. In defense of property where absolutely necessary

  4. In re-taking escaped prisoner or apprehending a felon

F. Robbery

  1. Unlawful taking of personal property from another against his will

  2. Finding of intent and force or a finding of fear of force in the person robbed

G. Burglary

  1. Breaking into and entering a building, auto, trailer, truck, railway car, vessel, booth, tent, shop, or enclosed garden

  2. Intent to commit a crime

H. Larceny--intentional deprivation of another of his property

  1. Degrees of larceny

      - a. Grand larceny--over $500 in value (or equivalent value in property taken from a person, a dwelling house, vessel or railway car)
      - b. Petty larceny--under $500

I. Arson--willfully setting fire to a building

   1. Degrees of arson

      - a. First degree--intentionally setting a fire at night with person in the building, car, vessel, vehicle, or structure burned
      - b. Second degree--fire set during the day with or without person present; fire set at night when no person is in building burned; burning to defraud insurer of property burned
      - c. Third degree--willful setting but with no person within; willful burning of any personal property of another worth over $25, or under circumstances not amounting to first or second degree arson

J. Forgery

   1. Drafting of an instrument with intent to defraud
   2. Attempting to show it as the act of another with intent to defraud

K. Bigamy--marriage to another while legal spouse is either alive, undivorced, not under sentence of life imprisonment, or marriage not annulled (In New York this is a felony whether intent is present or not and it is also a felony for consort to enter bigamous marriage knowingly.)

L. Traffic

   1. Misdemeanors--unlicensed driving, unregistered vehicle, inadequate brakes, leaving scene of accident, driving while intoxicated (The second intoxicated driving conviction is a felony.)

      - a. If a police officer thinks a driver is drunk, he may request the accused to take one of four sobriety tests within two hours after arrest.
      - b. The accused cannot be compelled to submit to this test. And he is entitled to a hearing, but his drivers license may be revoked for refusal.

V. General Information About Criminal Cases

A. In a criminal case all twelve jurors must vote for conviction (5-6 majority in a civil case).

B. Habeas corpus is used to secure a release from unjust imprisonment.

C. Corpus delicti is the essential ingredient of the crime. Without it no prosecution can be successful. (This means proof of the crime and not merely production of the body.)

D. Legal Aid Society is an association of attorneys aiding people who are without money.

E. A criminal assignment occurs whenever a defendant has been accused of a crime and has no money to hire a lawyer. The judge assigns a lawyer to represent the defendant. There is no fee except in cases involving capital punishment where a statutory fee is paid by the State.

F. Each county has a lawyer for indigent persons, either a public defender or a lawyer provided by the bar association.

VI. Miscellaneous Rights of Defendant

A. Defendant cannot be placed in double jeopardy.

B. Defendant cannot be compelled to testify against himself.

C. Defendant is entitled to a public trial, except that a judge may close the court in particular cases where sordid sex details will be brought out.

D. Search warrants are necessary before a house can be entered, unless property is seized incident to the arrest.

E. Defendant has a right to be confronted with his accusers and to cross-examine them.

F. Defendant does not have to take the stand. (And no presumption of guilt can be raised against him if he does not.)

To The Instructor

Try to attend the trial of a criminal action with the group. You can find out when any particular trial will start by contacting the clerk of the court. The court should be notified about plans to attend.

Course One, Session 7

COURTS

I. The Court System

   A. The Courts of New York State are divided into two groups. One group has appellate jurisdiction. The other has original jurisdiction--hearing the dispute the first time it is presented.

      1. State Supreme Court is the only court of unlimited original jurisdiction. Its principal distinction from other courts is that it may hear cause of any size involving any question.

         a. Civil and criminal jurisdiction (criminal rarely exercised)
         b. Ten judicial districts with several justices in each
         c. Statewide jurisdiction
         d. Only court with general equity jurisdiction

      2. County Court has criminal and civil jurisdiction.

         a. Court of limited jurisdiction

         b. Authority granted by Legislature

            (1) Sums of money in damages for torts and breaches of contract

            (2) Partition of real property

            (3) Dower

            (4) Foreclosure

            (5) Redemption or satisfaction of a mortgage upon real property

            (6) Foreclosure of a lien arising out of a contract for the sale of real property

            (7) Specific performance of contracts

      3. Civil Court in New York City has civil jurisdiction only and is limited to $10,000.

      4. District Courts in Nassau and Suffolk counties have civil and criminal jurisdiction and a $6000 monetary jurisdiction.

5. City Courts outside New York City have limited jurisdiction.
    a. Monetary jurisdiction is limited to $6000 and varies in amount: Albany $2000, Buffalo $6000.
    b. Civil and criminal jurisdiction
        (1) Cases are generally limited to actions for sums of money, mechanic's lien, eviction proceedings, chattels.
        (2) One party must reside in the city.
6. Justice Courts
    a. Very limited civil and criminal jurisdiction
        (1) Criminal jurisdiction--misdemeanors, traffic offenses, and violations of town ordinances
        (2) Civil jurisdiction--actions for sums of money not exceeding $500, and eviction proceedings

B. Appellate jurisdiction--authority to hear cases already tried in lower court

1. Court of Appeals (seven judges)
    a. State's highest court
    b. Limited to questions of law (except in criminal cases involving death sentence)
    c. Hears appeals from Appellate Division
2. Appellate Division
    a. There are four departments.
        (1) 1st Department--New York County
        (2) 2nd Department--Kings County
        (3) 3rd Department--Albany County
        (4) 4th Department--Monroe County
    b. Appeals are heard from four lower courts.
        (1) Supreme Court
        (2) County Court
        (3) Surrogate Court
        (4) Family Court
    c. The Appellate Division has original jurisdiction in admission and disbarment of attorneys, proceeding to remove

city magistrates, and certain controversies submitted upon agreed facts.

- d. The 3rd Department hears appeals from certain State government agencies.
- e. The 1st and 2nd Departments hear appeals from New York City Courts.
- f. The Governor makes appointments to the Appellate Division from the judges in Supreme Court.

3. Appellate Term
    - a. Functions in 1st and 2nd Departments only
    - b. Hears appeals from New York City Municipal Court and City Court
    - c. Has Supreme Court justices designated by Appellate Division
4. County Court--hears appeals from justice courts and city courts within county

C. Three other courts have limited original jurisdiction.

1. Court of Claims hears claims against State where State has waived immunity. Negligence cases, condemnation proceedings, and contract actions are typical examples.
2. Surrogate Court deals primarily with decedent estates.
3. Family Court deals with family difficulties, and offenses or crimes committed by minors under 14 years of age.

II. Federal Courts

A. Appellate jurisdiction

1. The Supreme Court of the United States (nine judges)
    - a. Nation's highest court
    - b. Final decision on questions of interpreting the United States Constitution
    - c. Appeals may be taken from State courts only on a violation of federal questions
2. United States Circuit Courts of Appeals
    - a. Eleven circuits
    - b. Appeals heard from United States District Court

B. Original jurisdiction

1. United States District Courts

   a. Constitutional questions
   b. Federal civil statutes
   c. Federal penal statutes
   d. Diversity cases

2. Bankruptcy Court--an arm of District Court

3. Limited courts of appeal

   a. Custom Appeal
   b. Patent Appeal
   c. Court of Claims

4. Administrative bodies (The ICC and FCC sit as a court does but are not courts.)

III. What Is a Law Suit?

A. A law suit is a request to the courts to determine the legal rights of two or more parties to a dispute.

B. The parties to the dispute are called plaintiff and defendant.

1. Plaintiff is the party who brings the action, claims to be aggrieved, and seeks redress (usually money damages).

   a. An action begins by serving defendant with a summons. This gives notice that defendant is being sued.

   b. Plaintiff also serves a complaint stating the facts upon which he relies.

2. Defendant is the party being sued. He has several choices.

   a. To default in answering or appearing

   b. To submit an answer denying plaintiff's claim on the facts (If defendant answers, he may demand a bill of particulars from plaintiff, setting forth in detail the elements of damage claimed to have been suffered by plaintiff. But if the defendant has failed to appear by submitting an answer, there can be a judgment by default.)

   c. To make certain motions under the CPLR, attacking plaintiff's claim as insufficient

   d. To admit some or all of the facts in the complaint and offer other facts opposing plaintiff's claim

IV. The Trial

A. The trial is preceded by various examinations.

B. The parties come to court with witnesses and physical evidence. Depending on circumstances they may be heard by one of the following:

1. Judge and jury
2. Judge alone (The parties may waive their right to a jury trial.)
3. Referee

C. There is a trial procedure.

1. Jury selection

    a. Trial jurors are chosen by lot from jury list

    b. Attorneys for both sides question jurors individually and excuse those not acceptable for these reasons:

        (1) Prejudice
        (2) Relatives of parties or attorneys
        (3) Knowledge of facts
        (4) Challenge

2. Judge's duties

    a. Administers oath to jurors
    b. Rules on objections and evidence
    c. Charges the jury (informs them of the law)

3. Opening

    a. Brief statements by counsel for both sides

        (1) Nature of the action
        (2) Issues involved
        (3) Facts each side expects to prove

4. Presentation of evidence

    a. Oral and documentary proof
    b. Rules of evidence

        (1) Facts only
        (2) Expert witnesses
        (3) Models

    c. Reluctant witnesses--failure to appear punishable by contempt and damages

5. Closing

    a. Both sides sum up their case.

    b. They may comment on evidence introduced but not on facts that are not in the record of the trial.

    C. The closing does not exceed one hour except with the court's permission.

6. Jury functions

    The judge instructs the jury about the law of the case. The jury decides questions of fact and fixes the amount of damages. The jury renders a verdict on each.

V. The Jury Trial

A. When is it used?

1. In action for a sum of money

2. In action for nuisance, waste, ejectment, recovery of a chattel, or determination of a claim to real property

3. In certain matrimonial cases

4. In all cases where defendant has been indicted for a felony

5. In reckless and drunken driving cases

B. Who serves?

1. Names are chosen from various sources, including the assessment role.

2. There are qualifications.

    a. U. S. citizen

    b. Resident of the county

    c. Age 21-70

    d. Own real property or personal property of $250, or be spouse of the owner

    e. Possession of natural faculties

    f. Be of good character, approved integrity, sound judgment and literate in English.

   g. Not convicted of felony or misdemeanor involving moral turpitude (Jud. L. §504)

3. Certain people are disqualified.

   a. Judges

   b. Clerks of courts or record

   c. Sheriffs

   d. Congressman in State or Federal legislature

   e. Duly elected Federal, State, city, county, town or village officials (Jud. L. §506)

   f. Certain public officers

4. There are exemptions from jury duty but they must be claimed (Jud. L.§507).

   a. Ministers

   b. Doctors, dentists, pharmacists, embalmers, and optometrists

   c. Active member of Armed Forces of U. S. or State

   d. Firemen, policemen

   e. Officer of sailing vessel

   f. Attorneys

   g. Newspapermen

   h. Women

Course One, Session 8

LITIGATION

I. Deciding To Litigate: Remedies Available

- A. Damages is a money judgment for torts or civil wrongs such as negligence, libel, slander, assault, battery, fraud, deceit, malicious prosecution, and false arrest.
    1. A landlord neglects to fix the broken stairway in his apartment house. You fall and break your leg. You may sue him for doctor bills, pain and suffering, loss of wages, and other losses.
    2. A dress manufacturer has agreed to sell you 500 dresses at $15 each but he does not deliver the dresses. You may sue for the money you lost by not having the dresses to sell.
- B. Specific performance is a directive by the court ordering the defendant to do something specific. In most breach of contract cases involving the sale of goods, you may recover only money damages unless the property is unique and not otherwise obtainable.
    1. Black and White enter into a contract whereby White is to sell his house to Black for a certain amount upon a certain date. White refuses to execute the deed according to the agreement. You may bring an action for specific performance and ask for an order directing White to execute the deed.
    2. Chan has agreed to sell you a Ming vase--one of three in the country. But Chan refuses to deliver even though you offer to pay the price agreed upon. You may ask for a judgment directing him to deliver the vase.
- C. An injunction is an order prohibiting the defendant from doing something: You have employed Faber in your drug store under written contract. He has agreed not to engage in the drug store business within a certain radius of your drug store for one year if he leaves. He leaves and within three months you learn he is about to open a drug store within this radius. You may ask the court for an injunction to prevent him from doing this.
    1. Either party generally has a right to a jury trial in a suit for money damages but this right may be waived.
    2. There is no jury trial in a suit for specific performance or in an action for an injunction.

II. Settling Out of Court

A. Your lawyer will usually attempt to settle out of court. A lawsuit is the last resort.

1. These are factors he will consider.

   a. Insurance
   b. Assets of defendant
   c. Calendar delay

III. Jurisdiction Over Defendant

A. In most cases plaintiff and defendant live or do business in the same community where the lawsuit arises. Suit is brought in the local court and defendant is served locally.

B. Sometimes, however, defendant lives out of the State. Plaintiff may sue in defendant's home state, or in some situations may bring suit in a local court: A Delaware motorist runs down Moffatt in New York. Moffatt may take advantage of the non-resident motorist statute and bring suit in New York without having to follow defendant into his home state.

C. As a general rule the substantive law of the State where the tort was committed will prevail. In the case of contracts, the law of the State with the most significant contact will be applied: Smith, a resident of New York, is injured in Wyoming but brings suit in New York. Wyoming law will still prevail.

D. When alternate forums are possible, consideration will be given to the following:

1. Amount involved (statutory limitations)

2. Calendar delay

3. Character of jury panels in particular communities

4. Procedural advantages (extent of pre-trial examination, for example)

IV. The Cost of Litigation

A. Expenses and court fees

1. Witness fees
2. Filing fees
3. Court costs
4. Fees for serving papers
5. Disbursements

B. Attorney's compensation

1. Methods

a. Fixed in advance--agreement to pay fixed fee win or lose

b. Contingent fee--usually a fee only if there is a recovery

c. Combination of above--contingent fee with a fixed minimum agreed upon

d. Fixed rate per hour--usually with complicated and lengthy litigation involving large amounts

e. Regulated fee--local court rules (The 1st Department prescribes a contingent fee schedule in negligence and wrongful death actions. A fee in excess requires court approval.)

f. Attorney's lien

V. What Evidence Can Be Used?

A. Courts follow rules of evidence to determine competency of a witness to testify about certain matters.

1. Formerly a party who had an interest in a matter was disqualified from testifying. This is no longer true. Either party or any interested party may testify. Usually conversations with a party now dead may not be testified to by an interested party. There are some exceptions to this rule.

2. There are priviledged communications.

a. Husband-wife
b. Attorney-client
c. Clergyman-penitent
d. Physician-patient

3. There are rules against self incrimination. No witness in any legal proceeding can be required to answer questions which would tend to incriminate him; that is, anything tending to subject him to a fine or imprisonment, forfeiture or confiscation of land, or to a penalty.

4. Hearsay evidence is inadmissible. Most evidence, written or oral, not based on the witness' own personal knowledge or observation but on what someone else has said is excluded. To be acceptable the evidence must be under oath and subject to cross-examination: When Porter testifies that Blank told him that he saw the car go through a red light, this is hearsay to Porter and inadmissable. Blank must testify about the car going through the red light.

VI. Pre-Trial Procedure: Exchanging Information

A. Pleadings and verification

1. Complaint--a written statement of plaintiff's claim

2. Answer--the written defenses asserted by defendant

3. Counterclaim--affirmative claim made by defendant

4. Reply--written statement by plaintiff after defendant's answer

    a. Where answer contains a counterclaim

    b. Where answer contains new matter constituting a defense by way of avoidance

5. Verification--affidavit accompanying the pleading and swearing to the truth of the statements. (Falsifications are subject to perjury.)

B. Bill of particulars--In certain cases statutes and rules provide that if defendant proceeds according to law, you must give him details of your claim in a bill of particulars--dates, locations, injuries, items of damage, etc.

C. Examinations before trial--It must usually be shown that the particular information sought is material and necessary and that it cannot be readily obtained except by an examination.

D. Physical examination--Defendant may be entitled to have his doctor examine you. If, for example, you sue defendant for permanent injuries, he may be entitled to have his own doctor examine you before trial.

E. Admissions--You may be requested to admit the truth or authenticity of a statement. Suppose defendant serves a written request upon you to admit the truth of some facts he has set up in his defense. If you make a sworn denial and he succeeds in proving his facts, you may have to pay the expense he incurred in proving the facts.

F. Discovery and inspection--A party seeks to examine your books and papers and to find out whether you have other articles or materials in your possession relevant to his case. So when you sue on a contract, defendant may claim partial payment and seek to examine your books and records for any data which may be necessary to his defense of having made payment.

G. Pre-trial conference--This was designed to shorten the trial.

1. Simplify and limit issues to be tried
2. Procure admissions to avoid unnecessary proof

3. Limit number of expert witnesses
4. Effect settlement

VII. Enforcing the Judgment

A. Execution--court order issued to sheriff to enforce money judgment

B. Garnishment

C. Specific performance or injunction--Court order operates directly on the individual involved and failure to obey renders him liable to contempt proceedings which can culminate in fine and/or imprisonment.

D. Supplementary proceedings--a proceeding to collect a money judgment either before or after execution: The judgment debtor is examined to discover his assets. In a case where you have a judgment against Poole and you think he has a bank account or money owing to him which you want to prevent him from assigning, you obtain an order directing him to appear at a specified court at a certain time with books, papers, and records which may give you information concerning his ability to pay the judgment. Such order usually also restrains him from assigning any of his property. You may serve similar orders upon a bank or safe deposit company where you have reason to believe Poole has an account or personal property in his own or someone else's name.

E. Enforcement of judgment in another jurisdiction--A judgment obtained in the courts of one state is usually given full faith and credit in another state, provided it is based on proper jurisdiction. Execution, however, cannot issue outside of the state where the judgment is obtained. So if you recover a judgment against Murphy for $50 in New York and his only property is in New Jersey, you may not issue execution in New Jersey, but you may bring suit in New Jersey on your New York judgment and obtain a New Jersey judgment. The facts of the case are not tried again.

VIII. The Appeal and Its Costs

A. Stay of execution--Generally the losing party must obtain an order from the court in order to stay execution. Or he may put up security as provided by statutes.

1. Security may be cash or bond of a surety company. The rate is usually about $20 per thousand.

2. Usually the security covers the amount of the money judgment and possible costs and disbursements which may be awarded should the appealing party lose the appeal.

3. A poor person does not have to furnish an undertaking to perfect an appeal.

B. Stenographer's transcript of the minutes

  1. To prepare record on appeal
  2. To inform appellate court of proceedings in lower court

C. Printing of record

  1. Briefs, reply briefs, minutes, pleadings, judgment roll, and the notice of appeal

  2. Copies for each member of the appellate court

IX. Legal Services Are Available

A. Services of bar associations

  1. "A man who is his own lawyer has a fool for a client."

  2. The bar association of your county, city, or the State serves the public as well as its own members.

    a. Many bar associations have lawyer referral service.

      (1) The bar association has a panel of lawyers and will recommend one particularly suited for specific cases.

      (2) The initial consultation fee, a nominal one, is fixed by the association.

    b. Bar associations work with legal aid offices. People who can't afford to pay are given help.

    c. Many bar associations have a public relations committee issuing material informing the public about legal protection.

B. Services of your family lawyer

  1. He will take care of your legal affairs, large or small.

  2. He will employ a specialist if it is necessary or if you request it.

  3. He is at your service to advise you and to protect your family.

C. Services of Office of Economic Opportunity--Neighborhood law offices are available to help in civil matters (no criminal cases).

Course Two

Course Two, Session 1

CONTRACTS

I. Contract Defined

  A. A contract is an agreement between two or more parties which the law recognizes and enforces as a legal obligation.

  B. Almost all business dealings are based on contracts.

  C. Every sale is in reality an executed contract.

    1. Insurance contracts
    2. Contracts to buy property
    3. Contracts of employment
    4. Security agreements (formerly conditional sales contracts)
    5. Promissory notes
    6. Marriage

II. The Elements of a Contract

  A. Mutual assent or meeting of minds is usually shown by offer and acceptance.

    1. An offer is a proposal to do something or to refrain from doing something.

    2. But if an offer is withdrawn at any time before acceptance there is no contract.

      a. "Offer no longer good after July 1, 1967." This means that after that date, an acceptance will have no effect.

      b. An auctioneer says, "How much am I bid for this clock?" (He has asked for offers.) A bidder replies, "Fifty-dollars." The bidder's wife reminds him that they already have a clock. So the bidder says, "I retract." (He has withdrawn.) The auctioneer bangs his gavel and says, "Sold for fifty-dollars." The auctioneer is wrong. He cannot accept a withdrawn offer. Since there is no mutual assent, there is no contract. But if he had brought the gavel down before the bidder retracted, there would have been an offer and acceptance--the elements of a contract.

    3. An offer to sell may be made irrevocable during a certain bloc of time (an option). It is a contract to hold an offer open. When John says that until July 1 you have the right to buy his farm for $20,000 if you pay him $50, he cannot revoke his offer until after that date.

4. General advertising of goods for sale or services is usually not an offer. It is an invitation to make an offer.

5. An acceptance is a compliance with the exact terms of the offer (But see Per. Prop. L. §84-a.): Jesop says he will sell a gold watch for $10 and Gonne counteroffers with $5. There will be a contract if Jesop accepts the $5. If not, there is no contract.

6. The offer must be made before it can be accepted: Purvis loses his dog, calls the newspaper, and inserts an ad offering a $100 reward. Before the paper is printed Mokus finds the dog and returns it. Next day Mokus sees the ad and demands a reward. Legally he is not entitled to it because there was no contract.

7. Although no verbal acceptance is made, acceptance may be implied from the action of the parties: Flint says to Pratt, "I will rent my garage to you from September to March for $10 a month." On September 1 Pratt puts his car in the garage. Pratt has accepted the offer because of his action.

8. In determining whether an acceptance was made before the offer was withdrawn, the method of acceptance is important. One who makes an offer by mail is considered to have made the post office the agent for receiving acceptance: Bale writes Phillips, "I will sell you 100 barrels of cider at $5.00 per barrel. Reply at once." Phillips wires back, "I accept your offer. Check to follow." Before receiving the wire, Bale calls Phillips and revokes the offer. Thus there is no contract. But if Phillips had sent acceptance by mail, there would have been a contract when the letter was posted. This is true even though Bale would have received the wire before the letter.

B. Consideration is the giving of something of value to the other party or the giving up of something of value to oneself. This may be the giving of a promise or the relinquishing of a right: Ford claims that Meyer has caused him damage for which Meyer is responsible. Meyer says he will give Ford $100 if Ford will relinquish his claim. ($100 is consideration from Meyer to Ford.) Relinquishment of claim is consideration from Ford to Meyer.

1. Consideration has to be bargained for at the time of the contract: "You took care of me when I was sick. I will give you $1000." The statement offers present consideration or promise to pay. So there is no contract. But the statement, "If you will take care of me, I will give you $1000" is a binding contract if care is given.

2. Consideration must be real or the contract is illusory.

C. The parties to a contract must be competent.

1. This is a corollary to the first element of a contract. The law assumes there can be no mutual assent if the parties are not competent.

2. A contract entered into by an insane person is absolutely void.

3. A contract by a married woman is good and as enforceable as any other. (Earlier law held otherwise.)

4. An infant's contract is voidable to the infant but not void: Mary Smith, 20 years old, buys a platinum fox fur for $1 down and $1 a week. The next day the store owner, learning of her infancy, wants the coat back. Mary can hold him to the contract, which can be voided only by her. But a week later she does not pay her dollar and the store owner sues her for the balance due. Mary defends her suit on the grounds of infancy, disaffirming the contract. She wins and does not have to pay the balance due, but she does have to return the fur since she cannot keep the fruits of the contract and deny her obligation to carry it out at the same time.

   a. An infant's conveyance of real estate, granting of a power of attorney, or appointment of an agent is voidable.

   b. An infant's contract may be ratified, expressly or by his behavior, after he has attained his majority. Exceptions: An emancipated infant over 18 years of age may be held for his business contracts. And an infant may be held for the reasonable value of necessities purchased by him. (See Educ. L. §281.)

D. A contract is not binding if it is made for an illegal purpose, even if there are both mutual assent and competent parties.

1. Smith hires Jones for one year to run a dice game for him. Jones is fired after one night and sues for his lost wages and broken employment contract. Jones cannot recover a cent because gambling is illegal. There is no enforceable contract.

2. Fred says to George, "I love your wife and want to marry her. She is bringing a divorce action against you and if you will not contest the action I will give you $10,000." There is no enforceable contract here because it is against public policy to have the sanctity of the home invaded.

III. Written and Oral Contracts

A. Some contracts must be written to be enforceable.

1. Leases or agreements to lease for more than one year

2. Contracts to sell real property

3. Contracts to answer for the debt or default of another

4. Contracts to sell personal property over the value of $500 unless partially executed at the time of the sale, or goods made expressly for buyer and not generally usable

5. Contracts by their terms not to be performed within a year

   a. Sam hires Frank to work for him, payment to be made on Sam's death. The contract need not be in writing since Sam may not live a year. Hence the contract may be performed within a year.

   b. Milo agrees to sell Henry two quarts of strawberries each year for three years at a certain price. The contract must be in writing to be enforceable since by its terms it cannot be performed within a year.

6. Contracts made in consideration of marriage

7. Contracts to pay debts previously discharged in bankruptcy

8. Contracts to bequeath property or to establish a trust

B. A written contract does not have to be a formal document.

   1. An exchange of letters may compromise a written contract.

   2. Memoranda may be held to constitute a contract when signed by the party to be charged.

C. It is generally wise to have a contract written even if the law does not require it.

   1. People have short memories if it will cost them money to remember.

   2. Frequently oral contracts are made without other people being present, and it becomes one party's word against the other's.

   3. If any part of the contract is written all of it should be written: Oscar agrees in writing to sell Henry his car for $100, assuring Henry on the side that he will buy it back for the same price after one week if Henry's wife does not like it. Henry's wife does not like it. Oscar buys it back for only $35. The agreement of repurchase should have been in writing to comply with the statue of frauds. The entire contract between the parties is assumed to have been merged in the written contract of sale.

D. If any writing constitutes a legal contract, it will be assumed to constitute the whole agreement and all terms in it will be binding. The fact that it is labeled "Offer to purchase" does not prevent it from being a binding contract.

Course Two, Session 2

CONTRACTS (Concluded)

I. Warranties

A. Let the buyer beware is one the oldest principles of common law. Buyers should make an ordinary inspection of goods to be sure there are no defects.

B. A warranty is created if at the time of the sale the vendor asserts a fact of which the buyer is ignorant and on which he relies in making the purchase.

   1. But the seller's statements of opinion about the value or worth of the article and sales talk are not treated as warranties.

   2. If the buyer is unwilling to rely upon his own judgment, he may demand from the seller an express warranty against defects.

C. A warranty is not a part of the sales contract. It is collateral to it and no particular form is required.

   1. The warranty can be made at the time of the sale.

   2. If a warranty is made after the sale has been consummated, it need not be supported by separate consideration to be binding (Gen. Oblig. L. §5-1103). Former law held that separate consideration was necessary to make the warranty binding.

D. In every sale there are certain implied warranties which are binding even though not actually stated. These are some of the more familiar ones:

   1. That the seller has title or the right to convey title

   2. That the goods purchased for a particular purpose will serve that purpose

   3. That the bulk of the goods will conform to the sample when the goods are purchased from a sample

   4. That goods will correspond to the description when the purchase is made from the seller's description

   5. That food sold is fit for human consumption

II. Assignment of Contracts

A. A third party may in some cases be substituted for one of the original parties to a contract.

B. A party to a contract may transfer or assign rights which he has acquired under the contract to another. (This does not include the claim to personal services.)

C. Obligations may not be assigned without the consent of the other party.

D. Assignments can be made by law.

  1. To the executor or administrator of a deceased's estate

  2. To a trustee who may enforce assignments for the benefit of creditors

III. Enforcement of contracts

A. You may validly refuse to perform your contract in a few situations.

  1. Where the other party prevents you from performing (Smith hires Carpenter to fix his roof and refuses to let him put up a ladder. Smith cannot sue Carpenter for failure to fix the roof.)

  2. Where it is impossible to perform (Smith's house burns down. He cannot sue Carpenter for failure to fix the roof.)

  3. Where it becomes illegal to perform (The town council passes an ordinance prohibiting people from going on roofs. Smith cannot sue Carpenter for failure to fix the roof.)

  4. Where the other party has previously waived performance or the contract has been mutually rescinded

B. Generally when one party to a contract refuses to perform, the other must rely on a suit for damages as his means of enforcement.

  1. If there is no injury, nothing will be recovered: John agreed to sell Mary a dog for $5. Mary agreed to pay but later refused. The next day Nancy bought John's dog for $10. John will not recover anything if he sues Mary for breach of contract because he was not injured.

  2. The measure of damages is generally the amount of the injury plus those losses naturally resulting from the injury: Smith pays Carpenter $50 to fix a roof in his absence. Carpenter does not fix it, and a $300 wardrobe is ruined by leaking water. Smith can recover $350 in damages.

3. The injured party has a duty to minimize damages. So Smith cannot recover for all damages if he saw water leaking on the wardrobe and left it there.

C. When damages are not an adequate remedy, a court will order specific performance of the contract according to its terms.

1. Every piece of land is considered unique, and a contract to sell land may be specifically enforced.

2. Although personal services are unique, specific enforcement of a contract of employment would be in violation of the 13th Amendment--prohibition against involuntary servitude. An employer whose employee has refused to work can recover damages only. He cannot force the employee to work. He may, however, be able to prevent the employee from taking similar work elsewhere.

D. Statute of limitations--An action to enforce the obligation of a contract must be started within six years of the date of breach.

IV. Installment contracts

A. Formerly called conditional sales contracts, chattel mortgage notes, or time sales contracts, they are now called security agreements. Most security agreements have these characteristics:

1. A down payment is required and is forfeited if the goods are repossessed.

2. If the contract is breached, title and the right to repossession remain with the seller until the last payment is made.

3. The contract is assignable and is generally assigned to a bank or other lending institution.

4. When one payment is not made on time, all remaining payments may be declared due by the seller at once and an attorney's fee collected, in addition to interest.

5. The property may not be moved to a new location without the consent of the seller. Under the law mortgaged property (conditional sales property) cannot be sold or secreted without the consent of the mortgagee.

B. The parties have certain rights after the property has been repossessed, whether through legal process or agreement.

V. Summary

A. A contract is an agreement that is recognized and enforceable by law.

B. Contractual law governs most of our business dealings which have a contractual basis.

C. These are the ingredients of an enforceable contract:

1. Mutual assent (offer and acceptance)
2. Competent parties
3. Legal purpose
4. Consideration
5. Writing (in some cases)

D. A contract can be enforced in two ways.

1. By specific performance (in some cases)
2. By a suit for damages

Course Two, Session 3

REAL ESTATE

I. What Is Real Property?

   A. Land

   B. Permanent buildings

   C. Growing trees, perennial shrubs, and grasses

   D. Minerals, oils, and gases

   E. Unharvested crops

   F. Natural materials and objects affixed to the land so that their identity is lost

      1. Wooden fences
      2. Stones

   G. Wells and springs

   H. Natural water courses

   I. Easements

II. How Is Real Property Owned?

   A. Single ownership

   B. Common tenancy (Each one owns a fractional part of the whole and anyone may convey his own interest.)

   C. Joint tenancy (The survivor inherits all.)

   D. Tenants by the entirety (The owners are husband and wife in a joint tenancy. Note: Illustrate how death, divorce, separation, etc. affect ownership.)

III. Types of Ownership of Real Property

   A. Fee--complete ownership

   B. Life estate--ownership during life

   C. Estate for years--land interest under a contract giving possession for a definite and limited period of time (a lease)

IV. Who Can Own, Buy, and Sell Real Property?

A. Anyone can own real property

B. Anyone can sell real property, except persons under 21 or mental incompetents. For them special court proceedings must be taken for authorization of sale.

C. Deeds made by minors, mental incompetents, and intoxicated persons may be voided by them.

D. If a husband owns property in his own name, he can convey a good title without his wife executing the deed unless he owned it while married before September 1, 1930.

V. Methods of Obtaining Ownership of Real Property

A. Descent--interest in real property transferred to heirs because of death (no will)

B. Wills--ownership in real property transferred as set forth in the will

C. Adverse possession--continuous, actual, exclusive, and open occupation for 15 years, which is hostile or under claim of right

D. Deed (also called conveyance)--a writing subscribed to (Use a sample deed.)

E. Eminent domain--taking of land for public use (Compensation is fixed by the courts.)

F. Prescription--obtaining easement rights after 10 years under similar circumstances as obtaining title by adverse possession

VI. The Deed

A. The deed must be in writing and be signed by the owner or his agent.

B. The seller is called the grantor. The buyer is the grantee.

C. Parties to a deed must be identified.

D. The deed must describe the real property conveyed.

E. If the deed is not acknowledged, it may be good only against the grantor or his heirs.

F. To be effective the deed must be delivered and accepted.

G. The deed conveys only what the grantor had unless covenants are included.

H. If the deed is not recorded, it is void against a later purchaser for value without notice if the later purchaser records his deed first.

VII. Deeds and Deed Covenants (Use sample forms.)

A. Warranty deed--warrants title (See D below.)

B. Quitclaim deed--conveys only the grantor's interest

C. Bargain and sale deed--property granted

D. Deed covenants

1. That seller owns the fee simple (seizin)

2. That no one can oust the buyer (warranty and quiet enjoyment)

3. That seller will make or obtain any other assurance of the title if necessary

4. That there are no encumbrances

a. Liens
b. Leases
c. Easements
d. Encroachments
e. Miscellaneous

E. Lien covenant--agreement to hold proceeds of sale as trust fund to pay costs of improvements

VIII. Sale and Purchase of Real Property (Use specimen contract.)

A. Contract of sale

1. To be enforceable the contract must be written. But when it is oral it may be enforced if the buyer makes valuable improvements or is given possession and also pays part or all of the price.

2. The property must be described with reasonable certainty.

3. The sale price must be expressed.

4. The contract must be signed by the parties or their authorized agents.

5. If no time for performance is expressed, reasonable time is implied.

6. An action may be brought for specific performance if there is a breach of contract.

7. The contents of the contract govern all the subsequent rights and obligations of the parties until the deed passes except that there is an implied promise that the seller will give a marketable title. (Discuss the general meaning of marketable title.)

8. After the buyer accepts the deed his contract rights end and his rights depend on what is contained in the deed.

9. If the contract does not provide otherwise, the provisions of Real Property Law §240-a are effective in case the property is destroyed or taken by eminent domain.

10. Unless the contract states that the date of performance is "of the essence," either party has a reasonable time after the performance date to perform if he cannot do so before.

B. Matters included in contract of sale (Items vary according to local custom.)

1. Sale price and down payment
2. Payment of balance
3. Proration of taxes
4. Special assessments

    a. Sewer
    b. Water
    c. Sidewalk and Street
    d. Miscellaneous

5. Rights of parties

    a. Fire
    b. Destruction
    c. Taking by eminent domain

6. Fire insurance premiums
7. Disposition of mortgage
8. Broker
9. Tenancies
10. Rents
11. Time and place of closing
12. Default procedure
13. Time of possession
14. Personal property included

      a. Storm windows and screens
      b. Range
      c. Refrigerator
      d. Washer
      e. Dryer
      f. Awnings
      g. Drapes
      h. Carpeting
      i. Fuel
      j. Miscellaneous

15. Survey or staking property
16. Type of deed
17. Condition of title
18. Contingencies

    a. Obtaining mortgage
    b. Selling another property

        (1) Time limitations
        (2) Rights of parties

19. Death of one party
20. Liens or encumbrances
21. Payment of mortgage expenses (if seller takes back)
22. Description of property
23. Personal property--value for tax purpose
24. Title search
25. Local requirements
26. Multiple Residence Law

C. Methods of financing

1. Assumption of existing mortgage
2. Extension of existing mortgage
3. Conventional mortgage
4. FHA mortgage
5. G.I. mortgage
6, Building loan agreement secured by mortgage
7. Second mortgage
8. Purchase money mortgage

D. Additional costs

1. Mortgage tax
2. Recording fees
3. Appraisal fees
4. Attorney's fees
5. Abstract of title or title insurance charges
6. Surveys and miscellaneous charges

E. Abstract (title examination) and title insurance

  1. Verify ownership of fee by seller through examination of records

    a. Judgment liens
    b. Mortgage liens
    c. Mechanic's liens
    d. Pending actions affecting title to the property
    e. Tax and special assessment liens
    f. Leases
    g. Maps affecting the property
    h. Dower rights
    i. Decedents debts
    j. Bankruptcy
    k. Easements
    l. Building restrictions
    m. Miscellaneous agreements and liens

F. The closing

  1. Execution of bond and mortgage
  2. Satisfaction of existing liens
  3. Clearing up encumbrances
  4. Payment of consideration
  5. Escrow accounts
  6. Execution and delivery of deed

G. The lawyer's function in real estate sales

  1. Prepare contract of sale

  2. Make abstract of title (not in some counties)

  3. Review abstract of title or title policy report

  4. Determine marketability of title

  5. Find out about liens and encumbrances, and the removal of them if possible

  6. Clear title

  7. Prepare and examine written instruments

  8. Attend to closing and items of adjustment

  9. Record and file instruments

Course Two, Session 4

NEGOTIABLE INSTRUMENTS

I. Negotiable Instruments: A Substitute for Money

A. A negotiable instrument is a contract. But there are some important differences between it and the ordinary contract.

Ordinary Contract	Negotiable Instrument
Writing may or may not be required.	Writing is required.
The payment of money, performance of an act, or delivery of goods may be called for.	The payment of money must be called for.
It does not have to be delivered to be effective.	The instrument must be delivered if it is to have any effect between the immediate parties.
It may be assigned.	Only if it contains words of negotiability may it be negotiated (a form of assignment).
The assignee acquires no greater rights than those held by assignor.	A holder in due course may acquire rights greater than those held by the person who negotiated the instrument to him.
The assignor makes certain warranties but does not guarantee performance.	An endorser makes warranties and guarantees, conditionally, that instrument will be paid.

II. Essentials of a Negotiable Instrument

A. A negotiable instrument must be in writing and signed by the maker or drawer.

1. Body--printed, typewritten, or handwritten
2. Signature--handwritten
3. Ink--preferable but not required

B. The instrument must contain an unconditional promise or order to pay a sum certain in money.

1. The following examples do not comply with the requirement:

a. Payment "when Morgan accepts my building from me" is conditional.

b. I.O.U. $50 (signed) John Jones is not a promise to pay.

c. A promise to pay "$200 or the equivalent in yarn" at the option of the person making the promise is a conditional promise to pay a sum certain in money.

2. The sum is certain even though it is to be paid with a stated discount or addition if paid before or after maturity.

C. It must be payable on demand or at a definite time.

1. Payable on demand

a. If "on demand," "at sight," or "on presentation" is expressly stated

b. If no time for payment is expressed

2. Payable at a definite time

a. When it is expressed to be payable on or before a stated date or at a fixed period after a stated date

b. When it is expressed to be payable at a fixed period after sight or at a definite time subject to any acceleration

c. When it is expressed to be payable at a definite time subject to extension at the option of the holder, or to extension to a further definite time at the option of the maker or acceptor, or automatically upon or after a specified act or event

Note: An instrument otherwise payable only upon an act or event uncertain as to time or occurrence is not payable at a definite time, even though the act or event has occurred.

D. It must be payable to order or to bearer.

1. Payable to order when payable to the order or assigns of any person or when designated on its face as "exchange" and names a payee.

2. Payable to bearer when drawn payable to bearer or the order of bearer, a specified person or bearer cash, or the order of "cash" (or any other indication which does not purport to designate a specific payee).

III. Types of Negotiable Instruments

A. Certificate of deposit--an acknowledgement by a bank of receipt of money with an engagement to repay it

B. Note--a promise other than a certificate of deposit

Promissory Note

$150.00 Albany, N.Y. August 1, 19___

Thirty days after date I promise to pay to the order

of __________ Payee __________

One-hundred-fifty-and-00/100------------------Dollars

Maker

1. Parties
   - a. Maker--person making the promise
   - b. Payee--person to whom the promise is made

C. Draft (bill of exchange)--must be an order.

Bill of Exchange (Sight draft)

$500.00 New York, N.Y. August 2, 19__

At sight

pay to the order of _____ Payee _____

Five-hundred-and-00/100------------------------Dollars

To: Drawee

Pelham, New York Drawer

1. Parties
   - a. Drawer--person giving the order
   - b. Drawee--person to whom the order is given
   - c. Payee--person to whom the money is paid

Note: The drawee is not liable until he accepts the liability. After acceptance he is known as the acceptor.

2. Forms

a. Sight draft--payable on demand or at sight
b. Time draft-- payable at a future time

D. Check--draft drawn on a bank and payable on demand

IV. Nonessentials of a Negotiable Instrument

A. Can be undated, antedated, or postdated

B. Can omit statement of any consideration

C. Is negotiable even though under a seal

D. Is negotiable even if it does not specify the place were it is drawn or payable

V. Method of Negotiation

A. Delivery--instrument payable to bearer, such as a chek payable to "Cash"

B. Delivery and endorsement--instrument payable to order

VI. Endorsements

A. Method

1. An endorsement must be written by or on behalf of the holder on the instrument or on a paper firmly attached.

2. The endorsement works only when it conveys the etire instrument or any unpaid residue. If less, it opeates only as a partial assignment.

B. Purpose

1. To transfer title

2. To give additional security for payment by warrants

a. Good title or authorization to obtain payment or acceptance on behalf of one who has good title

b. Unaltered instrument

c. Genuine signatures

d. No knowledge of any insolvency proceeding instituted with respect to the maker or acceptor, or the drawer of an unaccepted instrument

C. Kinds

1. Blank--a signature without additional words. No endorsee is specified, nor is further endorsement necessary for further negotiation of the instrument

2. Special--specifies the person to whom or to whose order the instrument is made payable. Any instrument specially endorsed becomes payable to the order of the special endorsee and may be further negotiated only by his endorsement

3. Restrictive endorsement

a. Includes a condition: Pay to Richard Roe upon completion of garage foundation

b. Prohibits further transfer: Pay to Richard Roe only

c. Includes words signifying a purpose of deposit or collection: pay to the order of, for deposit only

d. States that it is for the benefit or use of the endorser or of another person: Pay to the order of Richard Roe as trustee for Henry Brown

4. Qualified endorsement: use of phrase like "without recourse" which limits the obligation normally undertaken by the endorser

VII. Holder in Due Course

A. A holder in due course is one who has taken a negotiable instrument under the following conditions:

1. Good faith and for value

2. A holder without notice that it was overdue or had been dishonored

3. No notice of any defense against or any claim to

B. A holder in due course holds the instrument free of certain defenses.

1. All claims

2. Failure or lack of consideration

3. Fraud in the inducement

4. Non-performance of any condition precedent, non-delivery, or delivery for a special purpose

5. Theft

C. A holder in due course is governed by the same rules of contract law as the immediate parties to the instrument in the case of certain other defenses.

1. Forgery
2. Incompetency of maker--infancy, insanity
3. Illegality
4. Fraudulent execution
5. Material alteration
6. Discharge in insolvency proceedings
7. Any noticed discharge

VIII. Liability of the Parties to Negotiable Instrument

A. Liability on a negotiable instrument--either primary (absolute) or secondary (conditional). The person primarily liable on an instrument is the person who by the terms of the instrument is absolutely required to pay it. All other parties are secondarily liable.

B. Primary liability of maker and acceptor

1. Admits the existence of the payee
2. Admits capacity to endorse

C. Secondary liability

1. Admits the existence of the payee and capacity to endorse

2. Warrants that upon notice of dishonor or protest he will pay the amount of the instrument to the holder or to any endorser who takes it up

D. Liability of qualified endorser--by transferring "without recourse" the transferor does not warrant that there exists no defense of any party as against him. But he does warrant that he has no knowledge of such a defense. All warranties referred to in VI, B are applicable to a qualified endorser.

E. Secondary liability of accommodation parties

1. An accommodation party signs the instrument to lend his name to another party to the instrument.

2. When the instrument has been taken for value before it is due, the accommodation party is liable in the capacity in which he has signed even though the taker knows of the accommodation.

IX. How To Collect from Parties Secondarily Liable

A. Proper presentment (Presentment is a demand for acceptance or payment made upon the maker, acceptor, drawee, or other payor by or on behalf of the holder.)

1. Time

a. Where an instrument is payable at (or a fixed period after) a stated date, any presentment or acceptance must be made on or before the day it is payable.

b. Where an instrument is payable after sight, it must either be presented for acceptance or negotiated within a reasonable time after date or issue, whichever is later.

c. Where the instrument shows the date on which it is payable, presentment for payment is due on that date.

d. Where the instrument is accelerated, presentment for payment is due within a reasonable time after the acceleration.

e. Where a secondary party is liable, presentment for acceptance or payment is due within a reasonable time after liability arises.

f. Where any presentment is due on a day which is not a full business day for either the person making presentment or the party to pay or accept, presentment is due on the following full business day for both parties.

g. Presentment to be sufficient must be made at a reasonable hour.

h. If neither the party to accept or pay nor anyone authorized to act for him is present or accessible at such place, presentment is excused.

2. Procedure for presentment

a. Actual presentation

b. Acceptance or payment demanded

(1) Method of presentment

(a) By mail

(b) Through a clearing house

(c) At a place of acceptance or payment specified in the instrument, or if there be none at the place of business or residence of the party to accept or pay

B. Notice of Dishonor

1. Notice of dishonor may be given to any person liable on the instrument by or on behalf of the holder or any party who has himself received notice, or any other party who can be compelled to pay the instrument. Also an agent in whose hands the instrument is dishonored may give notice to his principal. Or a bank may give notice to its customer or to another agent or bank from which the instrument is received.

2. Any necessary notice must be given by a bank before its midnight deadline and by any other person before midnight of the third business day after dishonor or receipt of notice of dishonor.

3. Form of notice is immaterial. But it must be given in a reasonable manner.

4. Notice of dishonor is necessary to charge an endorser or drawer. A drawer is discharged if the drawer becomes insolvent during the period of delay in giving notice. An endorser is discharged in any event.

X. Discharge of Negotiable Instruments

A. Discharge from liability on a negotiable instrument

1. To the extent of payment or satisfaction, even though made with knowledge of a claim of another person to the instrument, except if claimant supplies indemnity or enjoins payment by court order

Note: A party will not be discharged of liability who in bad faith pays or satisfies a holder who acquired the instrument by theft (unless he is a holder in due course) or who pays or satisfies the holder of an instrument which has been restrictively endorsed in a manner not consistent with the terms of such restrictive endorsement.

2. Payment or satisfaction made with the consent of the holder by any person, including a stranger to the instrument

3. Tender of payment

a. Discharges any party to the extent of further interest, costs, and attorneys fees

- b. Discharges any party who has a right of recourse against the tendering party but who refuses tender
- c. Discharges any party where the maker or acceptor on other than a demand note pay at the place of payment specified in the instrument

4. Discharge by holder without consideration
   - a. By noting such discharge on the face of the instrument or the endorsement
   - b. By intentionally cancelling the instrument on the party's signature, by destroying the signature, or by striking out the signature
   - c. By renouncing his rights (signed writing) and delivering the instrument to the party
5. Release or agreement not to sue any person against whom the party has a right of recourse or, if the holder agrees to suspend the right to enforce the instrument or collateral against such party
6. Impairment of the collateral for the instrument
7. Reacquisition of the instrument (A prior party discharges an intervening party as against the reacquiring party and the reacquiring party may cancel endorsements not necessary to his title. Such cancellation discharges that endorser.)
8. Fraudulent and material alterations
9. Certification or acceptance (Where the holder assents to an acceptance varying the terms of the draft, each drawer and endorser who does not affirmatively assent is discharged.)

XI. Checks

A. Presentment of checks for payment

1. A check must be presented for payment within a reasonable time after its issue.
2. Failure to present the check for payment within a reasonable time discharges endorsers and drawers. A reasonable time for endorsers is seven days after endorsement. For drawers 30 days after issue is reasonable.

B. Certification of checks

1. A certified check is a regular check drawn on a bank by a depositor and accepted in advance of payment by the bank.

   a. A drawee bank is under no obligation to certify a check unless otherwise agreed.

   b. The certification consists of a promise on the part of the bank that it will pay the check upon presentation for payment at a later date.

2. Certification of a check carries with it different results, depending upon whether the drawer or the holder has it certified.

   a. When the holder obtains certification, the drawer and all prior endorsers are discharged.

   b. When the drawer obtains certification, the drawer remains secondarily liable as in any other instance when a drawee assents to the order of a drawer.

3. When a check has been certified, a bank shall not be required to stop or refuse payment.

C. Death of the drawer of a check revokes the authority of the bank to pay, except if payment is made without notice of the death.

D. A bank is liable to a depositor for payment of a forged or raised check if within one year after the return to him of the voucher of payment, the depositor notifies the bank that the check was forged or raised. But the bank is not liable for alterations due to the negligence of the depositor in drawing the check.

Course Two, Session 5

BUSINESS ORGANIZATION

I. Sole Proprietorship--a business owned by an individual working alone or an individually-owned business with one or more employees.

   A. Advantages

      1. Ease of formation and dissolution
      2. Low cost of operation
      3. Concentration of authority
      4. No dilution or sharing of profits
      5. Flexibility of organization
      6. Secrecy of operations
      7. Relative freedom from governmental control

   B. Disadvantages

      1. Unlimited liability for debts
      2. Difficulty in raising capital
      3. Limited life of organization
      4. Lack of continuity of management
      5. No assistance or advice of co-owners

II. Partnership--a voluntary association of two or more persons to carry on a business for profit with the partners sharing the profits and losses

   A. General partnership
   B. Limited partnership
   C. Combination partnership

      1. A partnership, as such, can be a member of another partnership, if that is the intent of the parties.

      2. A close corporation can be a partner.

   D. Advantages

      1. Ease of organization--partnership agreement

      2. Strength of credit--credit of all partners is behind the debts of the partnership

      3. Freedom from governmental control

      4. Joint responsibility for management

5. Flexibility of control--agreement of the partners

6. Varied abilities of partners combined

7. Ease of dissolution

8. Right to an accounting by a partner

    a. Partnership Law §44 provides the authority for an accounting.

    b. An action at law may not be maintained by one partner against another partner for any claim arising from partnership business unless there has been an accounting of the business, a balance struck, and an express agreement to pay.

9. Taxes

    1. No double taxation on profits
    2. No income tax as such--information returns only

E. Disadvantages

1. Unlimited liability of partners despite agreement of partners (no silent partner)

2. Limited life of partnership

    a. Terminated by death of a partner
    b. Terminated at will by any partner

3. New partnership agreement at transfer or change of partnership interest

4. Divided authority

5. Difficulty in obtaining long-term credit

6. Sharing of profits

7. All responsible for acts of one partner

8. Tax liability burdensome

    a. Each partner taxed for his proportionate share in the partnership whether distributed or not.

    b. Salaries paid to partners are treated as profits distributed or as drawings against capital account. They are not deductible.

c. Partnership is not an entity and is not entitled to certain deductions (charities). These are charged against the individual partner. The same rule applies to capital gains and losses.

d. Partners cannot avoid tax liability by assignment of interest in partnership since any change in parties results in a destruction of old partnership and creation of a new one requiring consent of parties.

III. Joint Venture--a special combination of two or more persons, whereby in some specific venture, a profit is jointly sought without any actual partnership or corporate designation.

IV. Corporation--a separate legal entity created by law, having shares of stock as indication of ownership interests and having the power to distribute profits to the stockholders by means of dividends

A. Board of directors
B. Agents of corporation (appointed by board)
C. Stockholder elections
D. Corporate powers

1. Business Corporation Law

2. General Corporation Law

3. Specific laws: Stock Corporation Law, Banking Law, Insurance Law

4. Corporate charter

E. Types of corporations

1. Public
2. Municipal
3. District
4. Monied (Bus. Corp. L. § 102)

F. Advantages

1. Limited liability of stockholders

2. Unlimited life of enterprise

3. No concentration of control in board of directors and officers

4. Transfer of ownership

a. Sale of stock does not require consent of other stockholders unless there are specific agreements in the corporate agreements.

b. Sale or transfer of stock does not change corporate status.

5. Stock-sharing plans

6. Legal entity with rights and privileges apart from those of its stockholders

7. Credit and capital obtainable through sale of stock or bonds

8. Limited liability of directors and stockholders

G. Disadvantages

1. Complexity of formation

2. State requirements

3. State and Federal taxes on incorporation, change of corporate structure, and taxes on transfer of stock and bonds

4. Legal expenses

5. Possible lack of freedom

6. Business limited by charter

7. Officers limited in their powers

8. Income Tax

a. Rates may be greater than on individual or partnership.

b. There is double taxation on profits and dividends (except Subchapter S corporations).

c. Amounts paid in dividends to stockholders are not deductible as a business expense.

9. Records

a. Stock ledgers and certificate books
b. Minute books for directors and stockholders
c. Payroll books

H. Types of corporate instruments

1. Common stock

a. Voting rights
b. Ownership rights
c. Dividends from profit

2. Preferred stock

   a. Preference in receiving dividends or surplus from profit
   b. Return a specified amount
   c. Specified voting rights

3. Bonds

   a. Promissory notes of corporation
   b. Interest in specified amount
   c. No profit sharing
   d. No voting rights

      (1) Secured bonds

         (a) Sinking fund--a certain specific amount set aside for bond payment

         (b) Mortgage bonds--payment secured by mortgage on equipment or property

      (2) Call of bonds

         (a) Callable before maturity
         (b) Prepayment

V. Trade Names and Fictitious Names

A. Individuals or partnerships

1. Certificate must be filed with county clerk (P. L. §440).

2. There cannot be a conflict with any other trade name on file or in use.

3. The name cannot be contrary to public policy and must not be prohibited by law.

B. Corporations

1. The name of the corporation is limited by the corporation laws of the State and must have the word "corporation," "incorporated," or "limited" (an abbreviation will do) in its name.

2. Only the corporate name can be used.

3. The corporation may not use prohibited names such as "insurance," "bank," etc., unless specifically licensed as such.

4. The name may not conflict with another corporation's name, nor may it confuse the public.

Course Two, Session 6

EMPLOYMENT LAWS

I. Social Security Tax and Insurance Benefit Laws

  A. Purpose of Social Security
  B. Tax statute

    1. Employment tax

      a. Employees liable
      b. Special rules for farm and domestic workes
      c. Employer responsible for collection from mployee
      d. Rates and measurement of tax

        (1) Rate schedule
        (2) Wage base

    2. Self-employment tax

      a. Liability

        (1) Excepted professions and callings
        (2) Right-to-elect coverage

      b. Tax rate
      c. Basis of tax--earnings from trade or business only
      d. Benefits--same as for wage earners

  C. Old age and survivors' insurance benefits (Social Security)

    1. Title II of Social Security Act
    2. Persons covered
    3. Eligibility for benefits

      a. Basis--"quarters" of coverage
      b. Fully insured
      c. Currently insured
      d. Veterans' credits

    4. Types of benefits

      a. Classes of retirement benefits
      b. Survivors' benefits
      c. Disability benefits
      d. Lump sum benefit

5. Computation of retirement benefits

    a. Average monthly wage
    b. Benefit formula--primary insurance amount
    c. Maximum and minimum

6. Commencement of benefits

    a. Age requirements
    b. Early benefits
    c. Importance of filing claims

        (1) Procedure and proofs
        (2) Limitations on past due claims

7. Events resulting in loss or reduction of benefits
8. Family benefits
9. Disability benefits

    a. Waiting period: commencement, termination
    b. Disability freeze
    c. Rehabilitation service
    d. Reduction or suspension of benefits

10. Lump sum death payment

II. New York State Unemployment Insurance Law

A. Nature and purpose of law
B. Employers subject to law
C. Exempt employment--electing coverage
D. Payments to fund

    1. Employer only
    2. Basis of payment

        a. Definition of wages
        b. Excluded benefits and payments

    3. Factors determining rates

E. Benefits payable to unemployed persons

    1. Rate--determined by average weekly wage
    2. Amount and duration--accumulation of effective days

        a. Waiting period
        b. Maximum benefit--104 days a year

F. Claim Procedure

   1. Necessity for filing
   2. Qualifications determining eligibility for payments
   3. Waiting period
   4. Registration and reporting requirements

III. New York Disability Benefits

A. Coverage

   1. Employers of two or more employees
   2. Exemptions
   3. Right to elect coverage

B. Employees--exemptions
C. Contribution

   1. Employer's and employee's share
   2. Wage base

D. Eligibility for benefits

   1. Duration of employment
   2. Type of disability covered
   3. Limitations on type and period of disability

E. Benefits payable

   1. Maximum and minimum payments

   2. Reduction and suspension of benefits

   3. Effect of coverage under other laws

   4. Invalidity of assignment, waiver, execution or attachment of rights

F. Filing of claims

   1. Employed and unemployed workers' procedure
   2. Proofs of disability
   3. Appeals

G. Cause of action against third party causing disability
H. Private insurance plans

   1. Employer choice
   2. Benefits--may exceed statutory maximum

IV. New York State Workmen's Compensation Law

A. Purpose
B. Employment covered

1. Hazardous employments
2. Election by employer

C. Right to compensation for injury

1. Limitations
2. Exclusiveness of remedy
3. Waiting period
4. Payment

D. Employer's obligations

1. Treatment and care of injuries

2. Secure compensation payments--Employee agreement o pay costs or waive benefits is invalid.

E. Basis of compensation

1. Average weekly wage
2. Nature and extent of disability
3. Effect of payments from other sources

F. Death benefits

1. How measured
2. To whom paid

G. Procedure

1. Notice of injury or death
2. Physical examinations
3. Determination of claims
4. Modification, review, and appeals
5. Time limitations on right to compensation

H. Occupational diseases

APPENDIX

TIPS FOR INSTRUCTORS

1. Check room facilities: chalk, erasers, lights.
2. Introduce yourself and make a few introductory remarks.
3. Keep the atmosphere informal.
4. Avoid the use of the words "class," "teacher," "classroom," "students."
5. Use teaching aids: forms (summons, complaint, petition for letters of administration and so forth), mimeographed outlines, charts, motion pictures.
6. Always allow time for discussion.
7. Encourage questions but do not let any one participant take too much time.
8. Allow a 10-minute break at the end of each hour.
9. Start on time. Stop on time.
10. Translate legal terms into non-technical language. You have a better chance of reaching each person if you use simple words.

FILMS

"The Compulsive Car Thief"

28 min. Robert Anderson Associates. 1964.

This is the case history of a 21-year old prison inmate who has been stealing cars and getting caught since he was 10 years old. Friends, family, and the courts are baffled by his behavior.

Source: Health

"It Could Happen To You"

5 min. New York State Bar Association. 1960.

This film reenacts an automobile accident and presents a graphic enactment of each rule to follow in the event of an accident.

Source: N.Y.S.

"It's Later Than You Think"

5 min. New York State Bar Association. 1960.

A lawyer illustrates to a husband and father what would happen to his family if he were to die without a will.

Source: N.Y.S.

"Landlord and Tenant"

5 min. New York State Bar Association. 1961.

The danger of do-it-yourself lease forms is shown when a landlord has problems with two bongo-beating beatniks.

Source: N.Y.S.

"Living Under Law"

17 min. Michigan State Bar Association. 1952.

Shows what it means to be living under law and what contributions have been made by members of the legal profession.

Source: N.Y.S.

"Slips and Falls"

11 min. Parthenon Pictures. 1965.

Points out various hazards in offices, shops, and homes.

Source: Bell

"So You Want To Buy a Home"

5 min. New York State Bar Association. 1960.

A lawyer explains the legal intricacies of buying and selling real estate and the danger of buying property without a legal representative.

Source: N.Y.S.

"The True and the Just"

30 min. A. A. Schechter Associates. 1966.

The film depicts the experiences of a juror from subpoena to verdict.

Source: N.Y.S.

"What Is a Contract?"

10 min. Coronet Films. 1948.

Three areas are discussed: the basic elements of oral and written contracts, the need for contracts, and the binding nature of a contract.

Source: Commerce

"What Is a Corporation?"

10 min. Coronet Films. 1949.

Single proprietorship, partnership, and corporation are discussed with emphasis on the advantages and disadvantages of each.

Source: Commerce

"You, the Jury"

5 min. New York State Bar Association. 1960.

The growth of the jury system is traced from Magna Carta to the present.

Source: N.Y.S.

FILM SOURCES

The films listed on the previous pages may be borrowed from the sources below.

Bell

Bell Telephone Company
Local Office

Commerce

New York State Department of Commerce
Film Library
40 Howard Street
Albany, New York 12207

Health

New York State Department of Health
Film Library
84 Holland Avenue
Albany, New York 12208

N. Y. S.

New York State Bar Association
99 Washington Avenue
Albany, New York 12210

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